1987

Carolyn Joyce Bettinger nka Carolyn Boies v. Cass Bettinger : Brief of Appellant

Utah Court of Appeals

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IN THE COURT OF APPEALS

IN AND FOR THE STATE OF UTAH

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CAROLYN JOYCE BETTINGER, NKA CAROLYN BOIES, Plaintiff/Appellant, v. CASS BETTINGER, Defendant/Respondent.	APPELLANT'S BRIEF Court of Appeals 87-0500-CA Category 14(b)

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APPEAL FROM ORDERS
ISSUED BY THE HONORABLE DAVID S. YOUNG
THIRD JUDICIAL DISTRICT COURT

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IN THE COURT OF APPEALS

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JURISDICTION AND NATURE OF CASE

The Court of Appeals has jurisdiction over this matter under §78-2a-3, Utah Code Annotated, in that it is an appeal from a final Order entered in a civil proceeding. The proceeding below arose from a divorce action between the parties relating to enforcement and interpretation of the original Decree of Divorce entered August 14, 1980.

ISSUES PRESENTED FOR APPEAL

The April 21, 1987, Order entered by Third District Court Judge David S. Young modifying the original Decree of Divorce entered August 14, 1980, raises the following issues:

1. The lower court committed reversible error by failing to enter Findings of Fact and Conclusions of Law in sup-

port of the Order modifying the terms of the original Decree of Divorce.

2. The lower court abused its discretion by modifying the Decree of Divorce regarding visitation for Defendant husband where there was no finding of "substantial change of circumstances."

3. The lower court's awarding the Defendant attorney's fees was an abuse of discretion since no evidence was introduced on the issue of "reasonableness" of fees and no Findings of Fact were entered on the same issue.

4. The Court's interpretation of paragraphs 7 and 8 of the original Decree of Divorce misapplied the law to the facts of this case and failed to use the best evidence before the Court on the issue.

5. The lower court's failure to award the Plaintiff Carolyn Bettinger (Boies) Judgment for past due child support was an abuse of discretion.

STATEMENT OF THE CASE

A Decree of Divorce was entered in this matter on August 14, 1980. The Decree of Divorce awarded the Plaintiff the care, custody and control of the four minor children of the parties, subject to reasonable rights of visitation being reserved in the Defendant. The Defendant was ordered to pay child support in the amount of $200.00 per month per child for a total of $800.00 per month at the time of the entry of the Decree. The

child support was further ordered to increase each year on August 1st by an amount of eight percent (8%).

The Decree of Divorce was amended following trial for two days before the Honorable John A. Rokich, Judge presiding. A Minute Entry reflecting the decision of the Court to amend the Decree of Divorce was entered on February 1, 1985, and an Order was entered by the Court on September 25, 1985, pursuant to the Minute Entry of Judge Rokich.

On July 23, 1985, the Defendant was ordered to appear before the Court and show cause why Judgment should not be entered against him for past due child support. The matter was heard before the Commissioner of the Court on December 31, 1985, and the Commissioner recommended that Judgment be entered in the amount of $2,705.50 for past due child support through October, 1985, and that an Order to Withhold and Deliver be entered. On January 10, 1986, the Defendant filed an Objection to the Commissioner's Recommendation.

On March 24, 1986, an Order was entered by the Court awarding Judgment to the Plaintiff in the amount of $2,705.50 for child support arrearages and directing that an Order to Withhold and Deliver be entered. On May 9, 1986, Defendant filed a Notice of Hearing on his Objection to the Commissioner's Recommendation. Following the entry of the Judgment and Order to Withhold and Deliver, the Utah State Office of Recovery Services began collection procedures against the Defendant. On January 13, 1987,

the Defendant filed a Motion to Set Aside the Order and Waiver of Notice, and on that same date an Order was entered by Judge Judith M. Billings staying the enforcement of the Judgment and any collection efforts by the Office of Recovery Services on the Judgment until further hearing.

On March 11, 1987, an Order to Show Cause was filed by the Defendant and served upon the Plaintiff requesting relief as follows:

A. Setting aside the Order and Judgment previously entered;

B. That the collection procedures be set aside;

C. Finding the Plaintiff in contempt of court for disobeying Orders of visitation;

D. Seeking an injunction against Plaintiff from interfering with visitation;

E. Seeking a finding determining the amount of Defendant's lien against the parties' real property;

F. Ordering the home immediately sold and the proceeds of the sale awarded to the Defendant to the extent of his lien;

G. Judgment in favor of the Defendant and against the Plaintiff for his equity in the home;

H. Entering an Order interpreting the intent and meaning of the words of the Decree regarding Defendant's child support obligation;

I. Seeking an Order that the Defendant made excess payments of child support;

J. Seeking a reduction of Plaintiff's monthly obligation for child support by reason of excess payments and directing Plaintiff to pay Defendant's equity in the real property; and

K. Seeking attorney's fees and costs.

Hearing on the Orders to Show Cause of each of the parties, the Defendant's Motion to Stay the Judgment, and the Defendant's Objection to the Commissioner's Recommendation was held before the Court on March 24, 1987, with further arguments of counsel being heard on April 9, 1987. Minute Entries were placed in the file for both hearings and an Order was submitted to the Court by counsel for the Defendant, a copy of which was mailed to counsel for the Plaintiff on April 9, 1987. The Plaintiff filed an Objection to the Order, Request for Reconsideration and Motion for New Trial on April 20, 1987. The Court entered the Order over Plaintiff's objections on April 21, 1987. The Order signed by the Court on April 21, 1987, contained no Findings of Fact or Conclusions of Law, but amended the Decree of Divorce as follows:

A. Changing the Order of specific visitation which had been entered by the Court on September 25, 1985;

B. Striking paragraph 8 of the Decree of Divorce which directed the Defendant to pay the mortgage payments on the family home;

C. Modifying the provisions for the payment of child support to allow the Defendant to protect his interest in a marital asset (real property) by allowing a setoff against the payment of child support for any mortgage payments which Defendant continued to make on the parties' former marital residence;

D. Setting aside the Judgment entered on March 24, 1986, in the principal amount of $2,705.50;

E. Granting the Defendant control of the former family home and giving him full authority to undertake any and all actions necessary to accomplish the sale of the home;

F. Awarding Judgment in favor of the Defendant and against the Plaintiff for attorney's fees.

On May 18, 1987, Plaintiff filed a Motion pursuant to Rule 63(b) of the Utah Rules of Civil Procedure with supporting Affidavit requesting that Judge David S. Young recuse himself from this matter. All proceedings were stayed in this matter pursuant to Rule 63(b) until June 22, 1987, when a decision was made by Minute Entry by the presiding judge, Scott Daniels.

At a time convenient to counsel and the Court, hearing was held before the Court on August 31, 1987, on Plaintiff's Objection to the Order and Request for a New Trial. Following hearing, the Order of the Court was entered on September 21, 1987, which summarily denied the relief prayed for by the Plaintiff.

On November 10, 1987, the Plaintiff filed a Notice of Appeal from the Orders entered on April 21, 1987, and September 11, 1987.

STATEMENT OF FACTS

A Decree of Divorce (attached as Exhibit 1) was entered in this matter pursuant to Stipulation of the parties on August 14, 1980, providing in pertinent part, as follows:

A. At paragraph 2, it was ordered that "Defendant shall have reasonable visitation with each of the children upon reasonable notice."

B. Paragraph 3 ordered the Defendant to pay child support in the amount of $200.00 per month per child;

C. The Defendant was ordered to increase the amount of child support payments each year on August 1st by an amount of eight percent (8%).

D. Paragraph 7 provided:

> "Plaintiff is awarded the real property of the marriage in the form of a home located at 2740 East 4510 South, Salt Lake City, Utah, subject to a lien thereon for one-half of the equity that may be in the house at the time of the liquidation (which contemplates an increasing equity as the value increases). The equity is defined as the fair market value or sales price at the time Defendant becomes entitled to liquidate his lien as set forth herein, less the amount of mortgages, costs of improvements made by Plaintiff and costs of sale. This Lien shall not be forecloseable until the youngest child reaches 18 or until the home is sold or until Plaintiff remarries. On the occurrence of any of these events, two-thirds of the house payment then made shall be converted to child support and that sum shall be paid to the Plaintiff on a monthly basis as additional child support.

E. Paragraph 8 of the Decree of Divorce provided:

8. Defendant is ordered to continue making the payments on the home. Defendant shall also be entitled to take the entire interest portion of the house payment as a deduction for himself as well as three income tax exemptions on the children with Plaintiff to receive one exemption on the youngest child at the present time. (Record, pages 21-24.)

The Defendant filed a Petition for Home Study and Modification of Custody in 1983 which was tried before the Honorable John A. Rokich on January 29th and 30th, 1985. In the interim, the Plaintiff remarried in September, 1984. The Court took the matter under advisement and made its ruling by Minute Entry on February 1, 1985. (Record, pp. 99-102.) A Decree was entered on September 25, 1985 (Attached as Exhibit 2), reflecting the Minute Entry of Judge Rokich as follows:

1. Awarding each of the parties custody of two of their minor children.

2. Directing the Defendant to pay an additional $25.00 per month in support of the minor child, Chris Bettinger.

3. Providing specific rights of visitation with the minor children by the custodial (sic) parent on alternate weekends commencing at 6:00 p.m. Friday and ending 6:00 p.m. Sunday beginning February 8, 1985, and on weeks not preceded by weekend visitation, non-custodial parent was entitled to one weekend visit from 5:00 p.m. until 10:00 p.m. on a night satisfactory to both parties. Each of the parties were restrained from disparaging remarks and from interfering with disciplinary measures imposed by the custodial parent as well as from interfering with telephone communication of the children.

4. Each party was to notify the other of any juvenile delinquency charges filed against any children in their care to allow the non-custodial parent to attend any juvenile court hearing which might occur. (Record, pp. 118 and 119.)

On July 15, 1985, preceding the entry of the Order of Judge Rokich, the Plaintiff filed an Affidavit in support of an

Order to Show Cause seeking Judgment for past-due child support and other relief. (Record, pp. 105-108.) An Order to Show Cause was issued by the Court on September 6, 1985, directing the Defendant to appear and show cause why the relief prayed for by the Plaintiff should not be granted. (Record, p. 113.) The Order to Show Cause issued upon Plaintiff's Motion was argued before the Court on October 7, 1985, and taken under advisement. (Record, p. 120.) In October, 1985, the Plaintiff submitted a supplemental Affidavit addressing the amounts in dispute and showing the Defendant to be in arrears for child support in the amount of $2,705.50. The Affidavit was filed on June 3, 1986. (Record, pp. 131-145.) The Defendant also filed an Affidavit on September 20, 1985, disputing the amount of child support due. This Affidavit was also filed on January 3, 1986. (Record, pp. 168-198.) The Recommendation of the Commissioner was entered on December 31, 1985, and copies of the Commissioner's Recommendation were mailed to counsel on January 3, 1986. (Record, pp. 127 and 128.) The Defendant filed an Objection to the Commissioner's Recommendation on January 10, 1986, a copy of which was mailed to Con Kostopulos, counsel for the Defendant on January 10, 1986. (Record, p. 208.) Mr. Kostopulos was suspended from the practice of law in January, 1986, and Plaintiff obtained new counsel.

The objection to the Commissioner's Recommendation which was filed with the Court on January 10, 1986, and mailed to

counsel for the Plaintiff, Con Kostopulos, 712 Judge Building, 8 East Broadway, Salt Lake City, Utah, was never received by counsel for the Plaintiff. An envelope was contained in the court's files showing a mailing from the Salt Lake County Clerk's office to Mr. Con Kostopulos at that address on January 3, 1986, which was returned "attempted, now known." Plaintiff or her new counsel did not receive a copy of the Commissioner's Recommendation.

An Order was prepared pursuant to the Recommendations of the Commissioner which was entered by the Court on March 24, 1986. The Order which was entered on March 24, 1986, was prepared by new counsel for the Plaintiff without knowledge that the Objection existed. The Order awarded Plaintiff Judgment in the amount of $2,705.50, directed that an Order to Withhold and Deliver be entered, restrained each of the parties from harrassing, abusing or annoying the other, directed that future support payments would be made through the clerk of the Court, admonished each of the parties to comply with the visitation requirement set forth by the Order of Judge Rokich and denied Plaintiff's Motion for an award of personal property. A copy of that Order was mailed to Robert N. Macri, counsel for the Defendant, on March 14, 1986. (Record, pp. 212-214.)

Counsel for Defendant filed a Notice of Hearing on Defendant's Objection to the Commissioner's Recommendation on May 9, 1986, said hearing to be held before the Honorable John A. Rokich on August 5, 1986. (Record, p. 215.) By order of the

Court on August 8, 1986, the hearing was continued to September 15, 1986, and continued again without date on September 12, 1986. (Record, pp. 216, 217 and 220.)

Pursuant to the Order entered by the Court on March 24, 1986, the Utah State Office of Recovery Services, in September, 1986, commenced collection efforts for past due child support by garnishment of the Defendant's pay check from his employment. It was not until January 13, 1987, that the Defendant filed a Motion to set aside the Order of March 24, 1986, based upon mistake. The Court entered an Order on that date directing that enforcement of the Judgment and all collections would be stayed until hearing could be held on Defendant's Motion to set aside the Order. Hearing was set for February 9, 1987. (Record, pp. 223-236.) On March 2, 1987, the Defendant filed an Affidavit (Attached as Exhibit 3) with the Court stating:

1. That he had been awarded custody of two of the children of the parties in January, 1985;

2. That he had been denied visitation rights with the two minor children who remained in the custody of the Plaintiff;

3. That the Plaintiff had remarried in August, 1984;

4. That the Utah State Department of Social Services, Office of Recovery Services, had attempted to garnish his wages based upon the Judgment entered on March 24, 1986;

5. That he was entitled to a decrease in child support as a result of the Plaintiff's remarriage and that he had con-

tinued to make the monthly mortgage payment on the home of the parties for the sole purpose of protecting his equity in the home;

6. That the mortgage payment in August, 1984, was $275.00 and attaching to the Affidavit a schedule of the Defendant's computation of accruing child support since the entry of the Decree of Divorce as well as a summary of all payments made to the Plaintiff since the entry of the Decree through October, 1986. (Record, pp. 244-302.)

Based upon the Affidavit of the Defendant and without Motion, the Court issued an Order to Show Cause directing the Plaintiff to appear before the Court on March 24, 1987, to show cause why:

1. The Order and Judgment of March 24, 1986, should not be vacated;

2. Why execution, garnishment or other collection procedures pursuant to the Judgment should not be vacated and set aside;

3. Why Plaintiff should not be held in contempt of court for disobeying Orders regarding Defendant's right of visitation;

4. Why a permanent injunction should not be entered against the Plaintiff from further interfering with Defendant's rights of visitation;

5. Why a finding should not enter establishing the amount of Defendant's lien in the real property;

6. Why the real property should not be sold and the proceeds awarded to the Defendant to the extent of his lien;

7. Why Judgment should not be entered for Defendant's lien;

8. Why Findings and Orders should not be entered to resolve the meaning of the words of the Decree as to the extent of Defendants obligation for child support;

9. Why findings and Orders should not be entered confirming the amount of payments made by the Defendant with Judgment in favor of the Defendant for excess payment above his obligation for child support;

10. For an order terminating or reducing Plaintiff's (sic) monthly support obligation to reflect the excess payments made by Defendant;

11. Seeking attorney's fees for the proceedings before the Court and for staying enforcement by the Utah State Office of Recovery Services. (Record, pp. 303-307.)

A copy of the Defendant's Affidavit was never served upon the Plaintiff or Plaintiff's counsel. The Order to Show Cause was served upon the Plaintiff on March 7, 1987. (Record, pp. 247, 248, and 307.)

Hearing on the Order to Show Cause of the Plaintiff which was issued by the Court on September 6, 1985, Defendant's Motion to Set Aside Order filed on January 13, 1987, and Defendant's Order to Show Cause issued on March 11, 1987, was

held before the Court on March 24, 1987. There was no Petition for Modification of the Decree of Divorce filed by either of the parties; however, Defendant submitted a Memorandum of Points and Authorities in support of the Order to Show Cause (Attached as Exhibit 4).

Pursuant to agreement between counsel and the Court, a proffer of evidence was made to the Court. (Transcript of Proceedings, Order to Show Cause, Evidentiary Hearing, March 24, 1987, p. 3, Attached as Exhibit 6.) Counsel for the Defendant proffered that there were four issues to be decided by the Court. (Transcript, p. 3, lines 23-25.) Those issues were identified as follows:

1. Visitation (Transcript, p. 3, line 25);

2. The amount of the child support obligation and arrearage (Transcript, p. 4, line 24 through p. 5, line 1);

3. What to do with the home (Transcript, p. 8, lines 2-4); and

4. Attorney's fees and costs (Transcript, p. 10, lines 3-5).

Counsel for the Defendant relied upon the Defendant's Affidavit of March 2, 1987, and the Court file to address the issues of visitation. Proffer was made that if the Defendant were to take the stand, he would testify that there have been significant problems with visitation. (Transcript, p. 4, lines 1-23.)

In addressing the issue of child support, counsel for the Defendant relied upon the language of the Decree asserting that it "is somewhat ambiguous" and arguing that upon the Plaintiff's remarriage, it was not intended that the support obligation would increase, but decrease because Defendant would be relieved of the house (mortgage) payment. (Transcript, p. 5, line 1 through p. 6, line 14.) Defendant then asserted that he would rely upon the Affidavit of March 2, 1987, to support the calculation of child support payment of arrearage. (Transcript, p. 6, line 18 through p. 7, line 24.)

On the issue relating to the home, counsel for the Defendant proffered that the home has been listed for almost three years and has not been sold, that Defendant's appraiser had difficulty obtaining access to the home, and asked the court to allow the Defendant to attempt to sell the home. (Transcript, p. 8, line 4 through p. 9, line 12.)

On the issue of attorney's fees, counsel for the Defendant proffered that this has been an expensive proposition for the Defendant and submitted an exhibit which was received showing a statement for services rendered by counsel for the Defendant. Counsel further proffered that fees had been incurred for (1) attempting to stop collection by the Office of Recovery Services, (2) obtaining an Order to stay collection, (3) obtaining appropriate visitation, (4) determination of Defendant's child support obligation, and (5) the sale of the

home. No evidence was presented regarding the reasonableness of the fees charged either for the services rendered or the hourly rate charged by counsel for the Defendant. (Transcript, p. 10, lines 3 through p. 12, line 12.)

Exhibits D-1 through D-8 were received by the Court showing Defendant's calculation of accruing child support payments, payments made to the Plaintiff, the Defendant's Affidavit of March 15, 1987 (Attached as Exhibit 5), the collection notice of the Office of Recovery Services, the statement of attorney's fees, and Defendant's appraisal which had been conducted on the home.

Counsel for the Plaintiff proffered that with regard to the issue of visitation, that the Defendant has continually involved the minor children of the parties in the dispute between the parties, that the Defendant was obtaining Affidavits from the children which had been filed in this matter to involve them in the dispute and that the children were actually subpoenaed to the Court. Counsel stated that the Plaintiff has encouraged visitation and that the Defendant has previously told the children that if they did not want to visit, they did not have to. (Transcript, p. 18, line 6 through p. 19, line 13.)

On the issue of computation of the child support obligation, the Plaintiff was granted leave to submit a supplemental Memorandum and Affidavit and deferred all proffer on that issue to the Memorandum and Affidavit to be submitted, all of which was

allowed by the Court. (Transcript, p. 19, line 14 through line 21.)

On the issue of the control and sale of the home, counsel for the Plaintiff proffered that the Plaintiff had remarried in September, 1984, that the home had been continuously listed for sale since 1984, that the Plaintiff and her new husband continued to occupy the home to attempt to sell it for approximately one year after their marriage, when they ceased to occupy the home, that the roof on the home collapsed in 1986 and was repaired completely at the Plaintiff's expense, that the home had a housesitter in it for some time to protect it against vandalism and make it more sellable, that the Defendant could not possibly accommodate listing the home and selling it as his job requires him to be out of town 75 percent of the time, that the Defendant had never inquired of the Plaintiff personally regarding the status of the home or who was occupying it, that the Plaintiff offered to cash the Defendant's interests out or selling the home on a lease option and that the problem with the sale of the home was the existing market conditions in the Salt Lake valley. (Transcript, p. 15, line 9 through p. 18, line 5.)

On the issue of attorney's fees, counsel for the Plaintiff proffered that the Plaintiff had followed the law and had made only good faith efforts to obtain the payment of child support. It was asserted to the Court that each of the parties should pay their own costs and attorney's fees which they may

incur in this matter. (Transcript, p. 19, line 22, through p. 21, line 23.)

Each of the parties were then sworn and testified regarding the issues of visitation. The Plaintiff testified that she had repeatedly supported the Defendant's right of visitation, but that the parties had consistently had problems with visitation throughout the seven years since the entry of the Decree of Divorce. She further testified that the Defendant was not genuinely interested in visitation, and seldom made any reasonable arrangements for visitation. If the Defendant would make arrangements for visitation, he would often fail to arrive to pick up the children for the arranged visitation. (Transcript, p. 22, line 13, through p. 24, line 11.)

The Defendant was sworn and testified regarding the issues of visitation. He disclosed that he had significant problems with his daughter, that he had not visited with her consistently and that he believed the problem arose from the actions of the Plaintiff. (Transcript, p. 24, line 23, through p. 25, line 24.) The Defendant, under oath, requested specific visitation. (Transcript, p. 26, lines 1-7.)

The Court set out its Order of specific visitation at the hearing on March 24, 1987, as follows:

> I will enter a specific order of visitation. It is common that this court enters orders of visitation every other weekend and alternate red-letter holidays and half of Christmas and six weeks in the summer. I am willing to put all of that in an Order if your counsel cannot otherwise agree. That will be a specific order of this court. (Transcript, p. 27, lines 1-6.)

There was no further discussion of specific visitation by the Court, the parties, or counsel at that hearing. The court then entered its ruling by Minute Entry pending further hearing and receipt of responsive Affidavit and Memoranda from the Plaintiff as follows:

1. Visitation is to be liberal and reasonable.

2. The child support issues were reserved with counsel for the Plaintiff's to submit an Affidavit within ten days.

3. The issue of attorney's fees and costs were reserved.

4. Access and management of the home was transferred to the Defendant.

5. The orthodontist bill was to be examined by the parties in the matter and be resolved.

6. Further collection by the Office of Recovery Services was stayed. (Record, p. 310.)

On April 3, 1987, the Plaintiff submitted her Affidavit in opposition to the Affidavit submitted by the Defendant on March 2, 1987. In pertinent part, the Affidavit provided as follows:

> a. Initially, I sought from Cass Bettinger, the custody of our four children...and child support in the sum of $300.00 per month per child, for a total obligation of $1,200.00 per month. I asked for possession of the home, and in exchange, I agreed that I would pay the mortgage on the property and that the house would be subject to a lien in favor of Cass Bettinger for one-half of the amount of our equity as it existed in 1980, at the time of the divorce.
>
> b. Defendant...rejected this offer of settlement...and stated as his reasons for

rejecting the offer...his perception of the increasing value of the home....Cass Bettinger repeatedly expressed to me at the time of the divorce his belief that property would again double in value during the 1980's and that he wanted to participate in that increase in equity on an investment basis. For that reason, he stated that he wanted to arrive at a settlement whereby he would retain the house as an investment and continue to pay the mortgage on the property and whereby I would allow him to receive any increase in equity which might occur during the decade of the 1980's, rather than taking one-half of the equity as it existed at the time of the Decree in 1980. He also agreed to pay one-half the cost of improvements to maintain his investment. To date, he has paid nothing.

c. To resolve my claim for child support and possession of the house and Cass Bettinger's competing claim for continuing interest in any equity appreciation in the home, we arrived at the settlement contained in paragraph 7 of the Divorce Decree separating the home and mortgage entirely from child support. First, paragraph 7,...contains our agreement that Defendant's equity in the home would be calculated as of the date of the sale of the home rather than as of 1980, which contemplated an increasing value of the equity. I was awarded the home and the lien to Cass Bettinger for one-half the "increasing" equity [which] would be payable to him upon our youngest child reaching the age of 18 years, upon my election to sell the home or upon my remarriage. Upon the first to occur of these contingencies, I was to receive, in addition to the child support ordered in paragraph 3 of the Decree, an additional amount of two-thirds of the house payment on the home as additional child support to offset my costs in providing another residence for the children. Pursuant to paragraph 8 of the Decree, Defendant was to pay the mortgage payments on the home, not as child support, but as a real estate investment for as long as we retained the property. It was contemplated by myself and by Defendant, and we discussed at the time that we reached the stipulation in this case, that this would actually create a slight reduction in the Defendant's obligation to pay support to me in the event of my remarriage. We discussed the fact that this would occur because we assumed that the house would sell quickly upon being placed on the market and that because of the sale of the

> home, Defendant would be relieved from the obligation in the Decree to pay the mortgage. We agreed on the fact that his payment of the mortgage on our home until the date the home sold would not be support for the children, and that it would be in addition to the $200.00 per month, per child, child support ordered by the Court.... (Record, pp. 311-314.) (Emphasis added.)

No other evidence was presented to the Court by either party regarding the interpretation of paragraphs 3, 7 and 8 of the Decree of Divorce.

Following the receipt of Plaintiff's Affidavit, the Court scheduled closing arguments for April 9, 1987. At the hearing on April 9, 1987, the Court first addressed the issue of visitation in an interchange with counsel for the Plaintiff. The following exchange took place:

> Ms. Corporon: There was a question of visitation which I believe the Court already ruled on from the bench previously and I don't think there is any need to address that today.
>
> Judge Young: Okay. In order that we're clear, so that you can make findings, just recite what your understanding of that is as to the Court's ruling at that time.
>
> Ms. Corporon: Is that he is going to have visitation every other weekend and alternate state and federal holidays is my understanding. (Transcript of Proceedings, April 9, 1987, p. 4, lines 1-9.)

The Court, in summing up the argument of counsel for the Plaintiff addressed the issue of specific visitation as follows:

> So, as you understand it then, the three issues to be determined are, first, visitation, which the Court indicated that it would follow if they needed a specific Order of the standard descriptive visitation commonly used in the district. (Transcript,

April 9, 1987, p. 5, line 25, through p. 6, line 4.)

Counsel for the Defendant addressed the issue of visitation in argument and stated his understanding of the Court's Order as follows:

> Mr. McDonald: Thank you, your Honor. I think the Court's correct on the matters that have been resolved. It was my understanding, however, the visitation Order was basically every other weekend, alternating red-letter holidays, six weeks in the summer and I had understood a weekday evening during the week that there wasn't a weekend visitation--a very brief one, maybe on Wednesdays. That was my recollection. (Transcript, April 9, 1987, p. 6, line 22, through p. 7, line 4.)

The Court recognized that the Defendant's request for specific visitation was unrealistic and unreasonable when it stated:

> In terms of every other weekend, it is clearly not possible for him to anticipate an opportunity to utilize that amount of visitation nor is it consistent to think he is going to be here on the odd week to have a Wednesday or some other kind of visitation. So what's really going to happen here is, if these people are immature as they have shown, they are going to create confusion in the mind of a ten-year-old child that, I think, will create a tragedy." (Transcript, p. 15, lines 7-15.)

The transcripts then contain lengthy discussion of the Court's concerns regarding visitation, but there was no further discussion of the Order of visitation until the Court entered its only statement regarding the Order of visitation as follows: "Now, on visitation, I will grant the specific Order." (Transcript, April 9, 1987, p. 21, line 3.)

In addition, the Court ordered that, "There be no interference with any telephone opportunity to talk with the

child," (Transcript, April 9, 1987, p. 21, lines 4-6) and that advance notice is to be given on Thursday night preceding the visitation if Defendant would not exercise visitation. (Transcript, April 9, 1987, p. 17 lines 21, 21.)

Paragraph 1 of the Order signed by the Court on April 21, 1987, provides for substantially different visitation than that which was ordered by the Court at the hearings of March 24, 1987 and April 9, 1987.

Regarding child support arrearages and calculations, the Court determined that there were no arrearages, that the Plaintiff was not entitled to credit and that the Defendant was current in his child support payments. (Transcript, April 9, 1987, p. 20, lines 18-22.) This ruling was made even though the Defendant admitted that he had made child support payments directly to the Plaintiff only in the amount of $10,065.20 from February 1, 1985, through February 1, 1987. (Record, p. 372.) Based upon Plaintiff's interpretation of the Decree of Divorce, the only evidence of interpretation which was presented to the Court, the Defendant was delinquent in the payment of child support in the amount of $12,832.55 for the period from February 1, 1985, through February 1, 1987, based upon the entry of the Order on September 23, 1985. (See Exhibit "A", attached hereto.) In the alternative, if the change of support Order became effective as of the date of the Minute Entry of Judge Rokich, February 1, 1985, the Defendant was delinquent in the payment of child sup-

port in the amount of $7,877.83 for the period from February 1, 1985, through February 1, 1987. (See Exhibit "B" attached hereto.) These figures are arrived at by using the Defendant's calculations from his Affidavit. (Record, p. 370.)

During the time which had elapsed between the hearings on March 24, and April 9, 1987, the Plaintiff received an offer on the home which was accepted making the issue of the transfer or control of the home moot.

The Court then ruled that the Defendant was entitled to attorney's fees, as follows:

> ...I do believe that she improperly contacted Recovery Services and that she created that problem improperly, and that as a result of that, I am going to order that she pay $500.00 toward his attorney's fees. That's the only thing I am going to do in that area to resolve that issue. (Transcript, p. 20, line 23 through p. 21, line 2.)

Counsel for the Defendant prepared and submitted the Order on April 9, 1987, and on April 20, 1987, counsel for the Plaintiff filed a timely objection to the Order and a Motion for New Trial. (Record, pp. 383, 384.) The Court, on April 21, 1987, without hearing on Plaintiff's Objection, signed and entered the Order which had been prepared by counsel for the Defendant. Hearing was held on Plaintiff's Objection to the Order and Motion for New Trial on August 28, 1987, and the Court summarily denied the relief prayed for by the Plaintiff. Plaintiff then timely filed her Notice of Appeal.

SUMMARY OF LEGAL ARGUMENTS

1. The Court's April 21, 1987, Order modifies the original Decree of Divorce in this matter regarding visitation without a Petition for Modification ever having been filed, and adds an interpretation of paragraphs 7 and 8 of the original Decree of Divorce; the Court's failure to enter a finding of substantial change of circumstances, and generally failing to enter Findings of Fact and Conclusions of Law on each of the material issues is reversible error.

2. The April 21, 1987, Order regarding visitation is significantly different than the Court's ruling from the bench stated March 24, 1987, during the hearing; since no further evidence was introduced on a reasonable visitation schedule, the Court's April 21, 1987, Order should be vacated and a new Order reflecting the Court's original order should be entered.

3. The Court's April 21, 1987, Order awarded Defendant Cass Bettinger $500.00 in attorney's fees. The award of attorney's fees is reversible error since no evidence on the issue of reasonableness of attorney's fees was submitted and no Findings of Fact or Conclusions of Law reflecting reasonableness were entered by the Court.

4. The Court failed to apply principles of law regarding legal construction of the terms of the Decree of Divorce when it interpreted paragraphs 7 and 8 of the original Decree of Divorce. The Court failed to consider the only evidence submitted on the issue of interpretation and instead relied

on counsel's argument in memorandum of law for a basis of the ruling. The Court's failure to apply law to the facts and evidence of the case is an abuse of discretion.

LEGAL ANALYSIS

INTRODUCTION

Although the record of this case is somewhat confusing because of the myriad of hearings, Affidavits, Memoranda, record evidence and an unclear Decree of Divorce, the basis of this appeal is rooted in simple, legal principles which have been ignored by the trial court. The issues on appeal center on the Court's April 21, 1987, Order modifying and interpreting the original Decree of Divorce. The evidence upon which the Order was entered is: Decree of Divorce, entered August 14, 1980 (Record, pp. 21-24.); Defendant Cass Bettinger's March 2, 1987, Affidavit (Record, pp. 244-245, Attachments, pp. 248-302); Defendant Bettinger March 16, 1987, Affidavit (Record, pp. 343-347, Attachments, pp. 348-360); Transcript of Hearing, March 24, 1987; Affidavit of Plaintiff Carolyn Bettinger, April 3, 1987 (Record, pp. 311-325); Order, April 21, 1987 (Record, pp. 387-391.) The balance of the record regarding the issues raised on appeal is legal arguments and proffers.

The only issue which is somewhat complex relates to the unclear drafting of paragraphs 7 and 8 of the original Decree of Divorce which was entered on the record by oral stipulation of counsel and reduced to writing August 14, 1980. (Record, pp.

175-177.) However, even the issue of interpretation of paragraphs 7 and 8 of the Decree of Divorce should be settled on simple legal principles of document interpretation.

The trial court's failure to observe basic legal principles and follow standard judicial guidelines warrants reversal of the Court's April 21, 1987, Order and entry by this Court of appropriate Orders or, in the alternative, directions for appropriate action.

I.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY MODIFYING THE DECREE OF DIVORCE AND FAILING TO ENTER FINDINGS OF FACT AND CONCLUSIONS OF LAW UPON MODIFICATION OF THE DECREE OF DIVORCE AND BY FAILING TO FIND A "SUBSTANTIAL CHANGE IN CIRCUMSTANCES"

A. Legal Standards.

A trial court should enter an Order modifying a Decree of Divorce only upon the filing of a Petition to Modify and not upon an Order to Show Cause proceeding, Rules of Practice in Third Judicial District Court of the State of Utah, Rule 9. Then, upon filing of a proper Petition, there must be a showing of "substantial change in circumstances" between the parties. Christiansen v. Christiansen, 667 P.2d 592, 594 (Utah 1983); Kiesel v. Kiesel, 619 P.2d 1374, 1376 (Utah 1980).

Further, failure of a trial court to make Findings of Fact and Conclusions of Law on all material issues is reversible error unless facts in the record are "clear, uncontroverted and capable of supporting only a finding in favor of the

judgment." Acton v. Deliran, 737 P.2d 996, 999 (Utah 1987). The Findings of Fact must show that the court's judgment or decree follows logically from, and is supported by, the evidence. Smith v. Smith, 726 P.2d 423, 426 (Utah 1986).

B. Modification of Divorce Decree.

Paragraph 1 of the Court's April 21, 1987, Order changes visitation rights of Defendant Cass Bettinger under the Decree of September 23, 1986, to a newly detailed visitation schedule. (Record, pp. 385-386.) Additionally, the court interprets paragraphs 7 and 8 of the original Decree of Divorce such that Defendant's child support obligation is altered from the original intentions of the parties.

No evidence was presented at the March 24, 1987, hearing as to the reasonableness of the existing visitation schedule and no Findings of Fact were entered by the Court as to how it arrived at the appropriateness of the new schedule. The only mention by the court of its ruling is at page 27, lines 1-6, of the March 24, 1987, transcript, wherein Judge Young states:

> I will enter a specific Order of visitation. It is common that this court enter orders of visitation every other weekend and alternate red-letter holidays and half of Christmas and six weeks in the summer. I am willing to put all of that in an order if your counsel cannot otherwise agree. That will be a specific order of this court.

C. Judge Young's Order Modifying the Decree of Divorce Regarding Visitation Rights Must be Reversed.

The Defendant's failure to file a Petition for Modification and the Court's failure to enter Findings of Fact and Conclusions of Law on the issues of visitation and a visitation schedule, and specifically failing to enter a finding of changed circumstances, warrants this Court's reversing the April 21, 1987, Order. Judge Young's understanding of what is common in the Third District Court simply may not be appropriate for these parties. Without specific Findings of Fact on the issue of visitation, one can only guess as to whether the best interests of the parties and their children are being served by entry of the Orders. Without these findings, which are particularly appropriate for guidelines to the parties and their counsel in this bitterly-contested matter, the Judge's Order modifying visitation cannot be upheld. This conclusion is further buttressed by a lack of a finding that, since entry of the Decree on September 23, 1986, there has been a material change in circumstances warranting visitation rights.

II.

THE COURT'S ORDER ENTERED APRIL 21, 1987, REGARDING VISITATION SHOULD BE VACATED AND A NEW ORDER REFLECTING THE COURT'S ACTUAL RULING ENTERED

Paragraph 1 of the Court's April 21, 1987, Order, setting forth a detailed visitation schedule, is significantly different than the Court's original Order entered in open court

on March 24, 1987. The Court's Order, as announced by Judge Young from the Bench, is set forth in Section I.B. herein.

The April 21, 1987, Order differs from the Court's original Order in the following particulars:

1. Paragraph 1(b) provides for visitation on one week-day for three hours during those weeks when there is no visitation;

2. Paragraph 1(d) provides for visitation every Father's Day for six hours;

3. Paragraph 1(e) provides for eight hours visitation on even-numbered calendar years for eight hours on New Year's Day, Easter, Independence Day, Labor Day, Thanksgiving and odd-numbered calendar years on President's Day, Memorial Day, Pioneer Day, Veteran's Day and Christmas Day;

4. Paragraph 1(f) provides during odd-numbered calendar years when the Defendant does not have visitation for the entire Christmas Day, Defendant should have two hour's visitation on Christmas Day;

5. Paragraph 1(g) provides for one day visitation during the Christmas holidays as designated by the Defendant;

6. Paragraph 1(h) provides visitation for two hours on the child's birthday.

Plaintiff filed an objection to the proposed Order on April 20, 1987, and a corrected Memorandum of Points and Authorities on August 3, 1987. On September 11, 1987, the Court

summarily overruled the Plaintiff Carolyn Bettinger's objections. However, nowhere does the Court set forth a basis for entering the scheduled visitation which is so significantly different than that which was originally ordered by Judge Rokich on September 23, 1986.

III.

THE COURT COMMITTED REVERSIBLE ERROR AND ABUSED ITS DISCRETION IN AWARDING ATTORNEY'S FEES WHERE THERE WAS NO EVIDENCE SUBMITTED ON REASONABLENESS

A. Legal Standard for Entry of Attorney's Fees.

Utah courts require that the moving party present evidence of reasonableness of fees to support an award of attorney's fees; without the evidence and findings thereon, the court commits reversible error by entering a liquidated sum for attorney's fees. Kerr v. Kerr, 610 P.2d 1380, 1384 (Utah, 1980).

B. The Court Awarded Defendant Cass Bettinger Attorney's Fees Without Taking Evidence of Reasonableness of Fees.

Paragraph 7 of the April 21, 1987, Order awarded Judgment against the Plaintiff in the amount of $500.00 for attorney's fees incurred by the Defendant Cass Bettinger in obtaining the Order. The evidence submitted by Defendant's counsel in the March 24, 1987, hearing, was an exhibit showing a statement for services rendered; other than the exhibit, counsel proffered that the fees had been incurred for attempting to stop collection of the Judgment for past due child support by the Office of Recovery Services, obtaining appropriate visitation,

determining child support obligations and amounts due from sale of the home. (March 24, 1987, Transcript, p. 10 line 3, through p. 12, line 12.) No other evidence on reasonableness of the fees charged, or an hourly rate, was presented during the hearing.

Plaintiff Carolyn Bettinger's counsel proffered that the Plaintiff had only made a good faith effort to obtain child support and had simply followed the law in asserting her rights, maintaining each party should bear their own costs of court and attorney's fees. (March 24, 1987, Transcript, p. 19, line 22 through p. 21, line 23.)

Objections to entry of the award of attorney's fees based upon lack of evidence of reasonableness were made to the Court and summarily denied by the Court's Order of September 17, 1987. No Findings of Fact or Conclusions of Law were entered by the Court on the award of attorney's fees.

C. The April 21, 1987, Order Awarding Attorney's Fees Should be Vacated.

The Court's awarding the Defendant Cass Bettinger $500.00 in attorney's fees after having failed to take evidence on reasonableness of the fees is reversible error. Further, the Court's failure to enter Findings of Fact and Conclusions of Law on the issue of awarding attorney's fees is reversible error. The Court's April 21, 1987, award of attorney's fees to Cass Bettinger should be vacated.

IV.

THE COURT FAILED TO APPLY PRINCIPLES OF LEGAL CONSTRUCTION TO INTERPRETATION OF THE AMBIGUOUS PROVISIONS OF THE DIVORCE DECREE AND FAILED TO ENTER FINDINGS OF FACT AND CONCLUSIONS OF LAW ON THE INTERPRETATION, WHICH IS REVERSIBLE ERROR

The major contention on appeal relates to the Court's interpretation of paragraphs 7 and 8 of the original divorce Decree. Both Plaintiff and Defendant agree and admit that paragraphs 7 and 8 of the original divorce Decree is ambiguous and susceptible to differing interpretation. Defendant, in his Order to Show Cause, Motion and Memorandum, contends that he over-paid the Plaintiff child support based upon his interpretation of the wording of the Decree and sets forth detailed calculations. (Record, pp. 370-273.) However, prior to Defendant's Order to Show Cause, the Plaintiff had obtained a Judgment in the amount of $2,705.00 against the Defendant for underpayment of the amount of child support claimed due. (Record, pp. 212-214.) Judge Young, in his April 21, 1987, Order, agreed with the Defendant's interpretation which is set forth in his Memorandum of Points and Authorities in Support of his Order to Show Cause under Section C, beginning at page 3 through page 7 (Record, pp. 334-364), and vacated the prior Judgment for past due child support. (Paragraph 5, April 21, 1987, Order.)

The vastly different interpretation placed on paragraphs 7 and 8 of the Decree of Divorce should have easily been resolvable by Judge Young by applications of construction of

written instruments, a method which has been required by the Utah Supreme Court in cases where Judgments are subject to varying interpretation. The Court's failure to apply these principles is reversible error and an order of Judgment for past due child support.

A. Legal Principles Regarding Construction of Ambiguous Judgments.

The Utah Supreme Court has held that terms in a judgment which are ambiguous are subject to construction according to the rules that apply to all written instruments. Park City Utah Corp. v. Ensign Company, 586 P.2d 446 (Utah 1978); Moon Lake Water Users Association v. Hansen, 535 P.2d 1262 (Utah 1975).

Regarding construction of contracts, the Utah Supreme Court has held: "A contract made by parties should be construed so as to give effect to what the parties intended at the time it was made." DuBois v. Nye, 584 P.2d 823, 824 (Utah 1978). The Court has further held that where the intent of the parties cannot be ascertained from the content of the instrument itself, and a clear ambiguity exists and cannot be reconciled, resort may be had to extrinsic evidence. Utah Valley Bank v. Tanner, 636 P.2d 1060, 1061-2 (Utah 1981); Bennett v. Robinson's Medical Mart, Inc., 417 P.2d 761, 764 (Utah 1966).

B. Evidence Submitted on Interpretation of Divorce Decree.

In support of his interpretation of paragraphs 7 and 8 of the Decree of Divorce, the Defendant Cass Bettinger submitted an Affidavit on March 2, 1987, in support of his Order to Show Cause (Record, p. 244-302), a Memorandum of Points and Authorities (Record, p. 334-342), a corrected Affidavit dated March 16, 1987 (Record, p. 343-360).

On March 24, 1987, a hearing was held before Judge Young wherein both parties were sworn and evidence taken. As a result of the hearing, the court ordered that the parties submit additional Affidavits regarding the issues of child support as it relates to interpretation of paragraphs 7 and 8 of the original Decree of Divorce (March 24, 1987, Order, p. 1; Record, p. 309.)

On April 2, 1987, Plaintiff Carolyn Bettinger submitted an Affidavit wherein she details the basis upon which the parties stipulated in open court on August 14, 1980 (Carolyn Bettinger Affidavit, pp. 2-3; Record, p. 312-313). In those pages, which has heretofore been set forth in the Statement of Facts at pages 19-20 herein, the Plaintiff states that the Defendant Cass Bettinger,

> Repeatedly expressed to me at the time of his divorce his belief that property would again double in value during the 1980's and that he wanted to participate in that increase in equity on an investment basis. For that reason, he stated that he wanted to arrive at a settlement whereby he would retain the house as an investment and continue to pay the mortgage on the property...rather than taking one-half of the equity as it existed at the time of the Decree in 1980.

She further states that she had a competing claim whereby she desired $300.00 per month per child for a total of $1,200.00 per month. Finally, to resolve the competing claims, the Plaintiff states in her Affidavit at paragraph C:

> We arrived at the settlement contained in paragraph 7 of the divorce Decree separating the home and mortgage entirely from child support. First, paragraph 7...contains our agreement that the Defendant's equity in the home would be calculated as of the date of sale of the home rather than as of 1980, which contemplated an increasing value of equity.

Further,

> Upon the first to occur of these contingencies, I was to receive, in addition to the child support ordered in paragraph 3 of the Decree, an additional amount of two-thirds of the house payment on the home as additional child support to offset my costs in providing another residence for the children. Pursuant to paragraph 8 of the Decree, Defendant was to pay the mortgage payments on the home, not as child support, but as a real estate investment for as long as we retained the property.

The Defendant submitted no testimony, either in the March 24, 1987, hearing or by way of his March 2 and March 16, 1987, Affidavits which relate to a basis for interpreting paragraphs 7 and 8 of the divorce Decree. In other words, the only evidence submitted on interpretation of the divorce Decree by either party was the April 2, 1987, Affidavit from the Plaintiff. However, despite this clear, and only, evidence on interpretation, the Court relied only on paragraph C of the Defendant's Memorandum in Support of Relief Sought by Order to Show Cause wherein legal argument, and not facts, is submitted by

the Defendant to support his interpretation. (Record, pp. 336-340.)

Based upon this interpretation, according to the Defendant's Memorandum of Points and Authorities, the Court held that the Judgment for past due child support should be vacated and made an interpretation of paragraph 7 which is contrary to the only evidence submitted on the issue. (Paragraphs 4 and 5, April 21, 1987, Order.) Based upon Plaintiff's evidence, the Court should have entered Judgment for Plaintiff in the amount of $12,832.55 or in the alternative, $7,877.83.

C. The Court Failed to Enter Findings of Fact and Conclusions of Law on its Interpretation of the Decree of Divorce.

As stated in Section I.A. herein, it is reversible error for a court not to enter Findings of Fact and Conclusions of Law on all material issues. It is clear from the record, that both parties believed that interpretation of paragraphs 7 and 8 of the original Decree of Divorce regarding payment of child support was the most significant issue before the Court in the March 24, 1987, proceeding. However, the Court has absolutely failed to set forth any facts or principles of law which guided the Court in reaching its decision.

D. The Court's Interpretation of Paragraphs 7 and 8 Should be Reversed.

The Utah Supreme Court has been clear that where judgments are ambiguous and open to interpretation, principles of document construction should be applied. Judge Young, rather than relying on the evidence submitted by the Plaintiff for interpretation of paragraphs 7 and 8 in her April 2, 1987, Affidavit, relied on legal argument contained in the Defendant's Memorandum of Law. This method of interpretation is contrary to established principles of judicial interpretation of documents and is in error in applying law to the facts of this case. Further, the Court's failure to recite Findings of Fact and Conclusions of Law regarding its interpretation of paragraphs 7 and 8 is reversible error.

This Court should vacate Judge Young's Order and require entry of an Order consonant with the evidence before the Court which shows a deficiency in child support payments by the Defendant, and direct the entry of judgment as stated herein and allow taking of evidence on the extent of the deficiency since February 1, 1987.

CONCLUSION

The Court's failure to enter Findings of Fact and Conclusions of Law on modifying the Decree of Divorce, awarding attorney's fees and interpreting paragraphs 7 and 8 of the Decree of Divorce, is reversible error. The Court's failure to apply

existing law to the facts of this case on each of the issues is an abuse of discretion. The Court's April 21, 1987, Order should be reversed and remanded in its entirety.

DATED this 4th day of April, 1988.

CRAIG M. PETERSON
Attorney for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I hereby certify that I caused to be hand delivered a true and correct copy of the foregoing Appellant's Brief to Robert M. McDonald, American Plaza III, 47 West 200 South, Suite 450, Salt Lake City, Utah 84101, this 4th day of April, 1988.

26405-26415

EXHIBIT "A"

(DECREE, SEPTEMBER 25, 1987)

Date	Child Support Due
2/1/85	$ 1,273.00
3/1/85	1,273.00
4/1/85	1,273.00
5/1/85	1,273.00
6/1/85	1,273.00
7/1/85	1,273.00
8/1/85	1,374.84[1]
9/1/85	1,374.84
10/1/85	712.42
11/1/85	712.42
12/1/85	712.42
1/1/86	712.42
2/1/86	712.42
3/1/86	712.42
4/1/86	712.42
5/1/86	712.42
6/1/86	712.42
7/1/86	712.42
8/1/86	769.41[2]
9/1/86	769.41
10/1/86	769.41
11/1/86	769.41
12/1/86	769.41
1/1/87	769.41
2/1/87	769.41
TOTAL	$22,897.75
PAID DIRECTLY TO PLAINTIFF	$10,065.20
CHILD SUPPORT DUE	$12,832.55

[1]Eight percent (8%) increase = $101.84
[2]Eight percent (8%) increase = $56.99

EXHIBIT "B"

(MINUTE ENTRY, FEBRUARY 1, 1987)

Date	Child Support Due
2/1/85	$ 661.50
3/1/85	661.50
4/1/85	661.50
5/1/85	661.50
6/1/85	661.50
7/1/85	661.50
8/1/85	714.42[1]
9/1/85	714.42
10/1/85	714.42
11/1/85	714.42
12/1/85	714.42
1/1/86	714.42
2/1/86	714.42
3/1/86	714.42
4/1/86	714.42
5/1/86	714.42
6/1/86	714.42
7/1/86	714.42
8/1/86	771.57[2]
9/1/86	771.57
10/1/86	771.57
11/1/86	771.57
12/1/86	771.57
1/1/87	771.57
2/1/87	771.57
TOTAL	$17,943.03
PAID DIRECTLY TO PLAINTIFF	$10,065.20
CHILD SUPPORT DUE	$ 7,877.83

[1]Eight percent (8%) increase = $52.92
[2]Eight percent (8%) increase = $57.14

//

EXHIBIT 1

ROBERT B. SYKES
Attorney for Plaintiff
261 East 300 South, Suite 210
Salt Lake City, Utah 84111
Telephone: 533-0222

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

CAROLYN JOYCE BETTINGER,	)	
Plaintiff,	)	DECREE OF DIVORCE
vs.	)	
CASS BETTINGER,	)	Civil No. D-80-931
Defendant.	)	

On the 1st day of August, 1980, this matter came before the above-entitled Court, the Honorable James Sawaya, District Judge, presiding. Both parties were present and the Plaintiff was represented by Attorney Robert B. Sykes, and Defendant was represented by Attorney Delwin T. Pond. Counsel for Plaintiff presented an oral stipulation regarding the complete settlement of this matter, which stipulation was acknowledged to be correct by Defendant and ordered by the Court to be incorporated in the Findings of Fact and Decree. Based upon the foregoing, and good cause otherwise appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Plaintiff is granted a Decree of Divorce from Defendant on the grounds of mental cruelty, the same to become final six months from the date of entry.

2. Plaintiff is granted care, custody and control of the four (4) minor children of this marriage, to wit:

MICHELLE, born June 19, 1967

CHRISTOPHER CASS, born January 15, 1971

JONATHON SCOTT, born March 11, 1972

NICOLE, born January 4, 1977

Defendant shall have reasonable visitation with each of the children upon reasonable notice.

3. Defendant is ordered to pay for child support the amount of $200.00 per month per child for a total of $800.00 per month at the time of this Decree. One-half of the total sum for child support is payable on or before the first (1st) day of every month beginning August 1, 1980, and the balance is payable on or before the sixteenth (16th) day of every month thereafter. Payment is to be made by way of check.

4. Defendant is ordered to increase the amount of child support payments each year on August 1 by an amount of 6 percent.

5. Plaintiff is granted alimony in the amount of $1.00 per year.

6. Defendant is ordered to keep in force all medical insurance on the children which he has through his employment, or pay any medical bills as they arise. Defendant is further ordered to pay any major or unusual medical or dental expenses such as orthodonic braces.

7. Plaintiff is awarded the real property of the marriage in the form of a home located at 2740 East 4510 South, Salt Lake City, Utah, subject to a lien thereon for one-half of the equity that may be in the house at the time of liquidation (which contemplates an increasing equity as the value increases). The equity is defined as the fair market value or sales price at the time Defendant becomes entitled to liquidate his lien as set forth herein, less the amount of mortgages, costs of improvements made by Plaintiff and costs of sale. This lien shall not be foreclosesable until the youngest child reacnes 18, or until the home is sold or until Plaintiff remarries. On the occurrence of any of these events, two-thirds of the house payments then made shall be converted to child support and that sum shall be paid to the Plaintiff on a monthly basis as additional child support.

8. Defendant is ordered to continue making the payments on the home. Defendant shall also be entitled to take the entire interest portion of the house payment as a deduction

for himself as well as three (3) income tax exemptions on the children with Plaintiff to receive one exemption on the youngest child at the present time.

9. With respect to personal property, Defendant is awarded his books, the stereo (with two speakers to be left behind), a cock bench, two swivel chairs, a moro chest, enough bedding, kitchen utensils, etc. to start his own household, the Toyota Celica, subject to the balance owed thereon, a lamp from India, the bookcase wall unit, as well as his own personal effects, clothing, knick-knacks, and such other personal property as the parties may divide among themselves. Plaintiff is awarded the balance of the personal property. Each party will assume and pay any obligations on any of the property awarded by the Decree.

10. Defendant is ordered to assume and pay all household debts through the date of the Decree as well as those specified in the Complaint.

11. The Stipulation entered into by the parties in open court on August 1, 1980, is incorporated into this Decree by reference.

12. Defendant is ordered to maintain life insurance payable to Plaintiff and/or the children in a sufficient amount to protect the expectancy interest of the children to child support during their minority.

13. Plaintiff is awarded $200.00 judgment for attorney's fees against Defendant, which Defendant should pay within thirty (30) days.

DATED this_____day of August 1980.

BY THE COURT:

HONORABLE JAMES KAWAYA
District Court Judge

APPROVED AS TO FORM:

DELWIN T. POND
Attorney for Defendant

JUDGEMENT

FILED

FILED IN CLERK'S OFFICE

SEP 25 4 39 PM '85

CLERK

BY DEPUTY CLERK

ROBERT MACRI, Esq. #2043
Attorney for Defendant
354 East 600 South
Salt Lake City, Utah 84111
Telephone: (801) 364-3018

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY,

STATE OF UTAH

CAROLYN J. BETTINGER, Plaintiff, vs. CASS BETTINGER, Defendant.	DECREE Bk 200 NO. 2867 9-26-85 - 8:10 A.M. Case No. D80-931

A Hearing on Defendant's Motion for Change of Custody and Plaintiff's Motion for Increased Child Support was held before the Honorable Judge John Rokich Judge of the above-entitled Court on January 29th and January 30th, 1985 and various witnesses were called and the children were privately interviewed by Judge Rokich in his chambers and based on the testimony of the witnesses, documentary evidence submitted and received, and the private interviews, the Court rules the following:

DECREE

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The custody of Michelle Bettinger and Jon Bettinger is awarded to Cass Bettinger. Chris Bettinger will remain with Plaintiff Carolyn Bettinger.

2. Cass Bettinger shall pay $25.00 per month in addition to his current Child Support payments for Chris Bettinger's support.

EXHIBIT 2

3. Visitation shall be as follows: The custodial parent should have alternate weekends commencing at 6:00 P.M. Friday and ending 6:00 P.M. Sunday beginning February 8, 1985. On weeks not preceded by weekend visitation the noncustodial parent is entitled to one weekend visit from 5:00 P.M. until 10:00 P.M. on a night satisfactory to both parties. Eac party is restrained hereby from making disparaging remarks about the other party in the presence of the children; from interfering with the disciplinary measures imposed by the custodial parent and from interfering with the telephone communications with the children.

4. Plaintiff and Defendant shall notify each other of any charges that have been filed against any children in their custodial care and in sufficient time to allow the noncustodial parent to attend the Hearing, if any.

DATED this 25 day of Sept-, 1985.

BY THE COURT:

John A Rokich

JOHN A. ROKICH, District Court Judge

APPROVED AS TO FORM:

ATTEST
H D[illegible]EY
Clerk

By Charles Johnson
Deputy Clerk

CON KOSTOPULUS
Attorney for Plaintiff

EXHIBIT 3

Robert M. McDonald (#2175)
Attorney of the Defendant
47 West 200 South, Suite 450
Salt Lake City, Utah 84101
Telephone: (801) 359-0999

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

----oooOooo----

CAROLYN JOYCE BETTINGER aka CAROLYN BOIES, Plaintiff, -vs- CASS BETTINGER, Defendant.	AFFIDAVIT OF CASS BETTINGER Civil No. D-80-931 Judge Judith Billings

----oooOooo----

STATE OF UTAH)
:ss.
COUNTY OF SALT LAKE)

CASS BETTINGER, being first duly sworn, deposes and says:

1. I am the Defendant named in this action and have personal knowledge of all facts stated herein except as to those facts specifically stated to be based upon information and belief.

2. Since the entry of the Decree of Divorce in this matter, I have taken custody of two of the four children born of the marriage. In January, 1985, Michelle (then age 18) and Jonathon (then age 13) began residing with me.

3. During the last twelve months, Plaintiff has consistently refused to permit me to exercise my visitation

rights with respect to the two children who reside with Plaintiff: Christopher, age 15 and Nicholle, age 9. When visitation is requested, Plaintiff claims pre-existing plans involving said children during the designated visitation days.

4. Plaintiff remarried in August, 1984. I am informed, and on the basis of such information believe, that the marriage remains in existence as of the date of this Affidavit.

5. Prior to September 22,1985, Plaintiff informed the Utah State Department of Social Services, Office of Recovery Services (hereinafter "Agency"), that I was in default in the payment of child support and contracted with said Agency to collect amounts in default. Said Agency thereafter served a Notice of Support Debt and Notice of Informal Settlement Conference. Copies of said notices are attached hereto as Exhibits "A" and "B" and incorporated herein by reference. I am informed by the Utah Office of Recovery Service, and on the basis of such information believe, that the Utah Office of Recovery Services has attempted to garnish my wages in order to enforce the Order and Judgment of March 24, 1986.

6. By reason of said Notice, I employed Robert M. McDonald, an attorney, to represent me before the Agency. I am informed that Mr. McDonald corresponded with the Agency and obtained a continuance of the hearing until the matter is considered by this Court. Despite such correspondence, the Agency has attempted to collect the Judgment of March 24, 1986, and thereafter served a garnishment upon my employer.

7. When Plaintiff remarried in August, 1984, I claimed that

I was entitled to a decrease in child support pursuant to the terms of the Decree and the change of custody. Plaintiff disputed my claim of reduction in support obligations. Despite my claim of entitlement to a reduction, I continued the monthly mortgage payment on the home for the sole purpose of protecting my equity in said home.

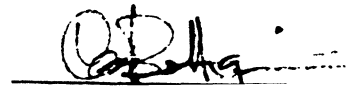
8. During the period beginning with the entry of the Decree in this matter to July, 1981, I paid Plaintiff the sum of $800.00 per month and paid all monthly installment payments on the home mortgage. The mortgage payment in August, 1984 was $275.00.

9. Dr. Willard Stratton sent a statement for orthodontic services performed during 1985 and 1986 to Plaintiff for payment. During the time the services were rendered, Plaintiff had an insurance policy that covered orthodontic services. It is my belief that the insurance company paid Plaintiff for the services and Plaintiff used the insurance payment for other purposes and has paid nothing to Dr. Stratton for the services. Dr. Stratton has made demand upon me for payment.

10. Attached hereto as Exhibit "C" is a schedule showing what I claim to be the child support obligations since the entry of the Decree in this matter.

11. Attached hereto as Exhibit "D" is a summary of all payments made to plaintiff since entry of the decree up to October, 1986. The schedule will be updated prior to hearing.

DATED this 2 day of March, 1987.



SUBSCRIBED AND SWORN to before me this 2nd day of March, 1987.

Diane Shepherd
NOTARY PUBLIC
Residing at Salt Lake City, Utah

My Commission Expires:
4-13-89

EXHIBIT 4

3

COPY

Robert M. McDonald
Attorney for Defendant
47 West 200 South, Suite 450
Salt Lake City, UT 84101
Telephone: (801) 532-1500

IN THE THIRD JUDICIAL DISTRICT COURT,
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH,

----ooo0ooo----

CAROLYN BETTINGER aka CAROLYN BOIES,	:	
Plaintiffs,	:	MEMORANDUM IN SUPPORT OF RELIEF SOUGHT BY ORDER TO SHOW CAUSE
-vs-	:	
CASS BETTINGER,	:	Civil No. D-80-931
Defendant.	:	

----ooo0ooo---

Defendant submits this memorandum in support of the relief sought by defendant pursuant to the Order to Show Cause heretofore entered by the Court. All of the issues raised by such Order will be discussed under appropriate headings.

A. MOTION FOR RELIEF OF JUDGMENT

During the course of the hearing before Commissioner Peuler, the Commissioner orally made a recommendation that plaintiff be awarded judgment against defendant in the sum of $2,705.50 for unpaid support obligations. A minute entry stating the recommendation was entered on December 31, 1985. It is important to note that no formal recommendation was ever executed by Commissioner Peuler. The only evidence of the recommendation is the minute entry.

On January 9, 1986, defendant objected to the oral

District Court Rules of Practice, provides that an objection to the Commissioner's recommendation must be filed within five days of the recommendation. Inasmuch as no recommendation was ever entered (the file contains only the minute entry) defendant's objection was timely. The Supreme Court has repeatedly held that a minute entry is ineffective to commence any time period including the time period allowed for appeal. State v, Hutchings, 672 P.2d 404 (Utah 1983); Hartford Accident and Indemnity Company v. Clegg, 135 P.2d 919 (Utah 1943); Robison v. Fillmore Commercial and Savings Bank, 213 Pac. 790 (Utah 1923).

The Court apparently did not observe the existence of defendant's objection and on March 24, 1986, the Court entered judgment in accordance with the recommendation. The fact that the objection was not observed by the Court at the time of the entry of the judgment shows on the face of the judgment itself. As a preface to the entry of the judgment the Court states: "... and counsel for neither party having failed to timely object to that recommendation...."

The Utah Department of Recovery Services, acting in reliance on the invalid judgment, initiated collection efforts and served the same upon defendant's employer. By reason of the apparent error showing on the face of the judgment, this Court, through the Honorable Judith M. Billings, stayed all collection efforts. See Order dated January 13, 1987.

Accordingly, plaintiff's Motion for Relief of the judgment of March 24, 1986 (filed on January 7, 1987) should be

stayed until hearing and disposition of defendant's objection which is one of the issues raised by this Order to Show Cause and is addressed in the following section.

B. THE JUDGMENT SHOULD BE SET ASIDE.

Exhibit "C" to the Corrected Affidavit of defendant (copy attached hereto) establishes that as of February 28, 1987, the total support payments for which defendant was obligated was $17,257.00. It should be noted this total assumes that the ambiguous language in paragraph 7 of the Decree is resolved in favor of defendant. (See Section C, infra.)

Copies of the cancelled checks, attached as Exhibit "D" to the Corrected Affidavit of defendant (copy attached hereto), establishes that payments for the relevant period equal $17,875.00. Thus, there is no basis for the judgment. Defendant has overpaid $618.00.

C. PARAGRAPH 7 OF THE DECREE CONTEMPLATES A REDUCTION IN SUPPORT PAYMENTS.

Paragraph 7 of the Decree of Divorce is poorly worded. The paragraph provides as follows: "Plaintiff is awarded the real property of the marriage in the form of a home located at 2740 East 4510 South, Salt Lake City, Utah, subject to a lien thereon for one-half of the equity that may be in the house at the time of liquidation (which contemplates an increasing equity as the value increases). The equity is defined as the fair market value or sales price at the time Defendant becomes entitled to liquidate his lien as set forth herein, less the amount of mortgages, costs of improvements made by Plaintiff and

costs of sale. This lien shall not be forecloseable until the youngest child reaches 18, or until the home is sold or until Plaintiff remarries. On the occurrence of any of these events, two-thirds of the house payments then made shall be converted to child support and that sum shall be paid to the Plaintiff on a monthly basis as additional child support."

Plaintiff remarried in August, 1984 (Bettinger Affidavit, paragraph 4). In January, 1985, two of the four children began living with defendant (Bettinger Affidavit, paragraph 2).

Plaintiff contends that paragraph 7 means that upon her remarriage or sale of the family home, defendant's obligations for support increase because defendant must continue making mortgage payments (an impossibility if the home is sold) and defendant must also increase child support payments in an amount equal to two-thirds of the mortgage payment.

Defendant contends that paragraph 7 means that upon plaintiff's remarriage or upon sale of the home, his obligations decrease in that he no longer makes the house payment, but pays a greater amount of child support in an amount equal to two-thirds of the mortgage payment (adjusted for children reaching the age of majority and children who thereafter reside with defendant).

Both interpretations can be supported if the Court considers only the wording of the Decree which was based upon a stipulation of the parties. Inasmuch as both interpretations can be justified by the wording, it is apparent that the wording is ambiguous and the Court must look behind the wording to resolve

the dispute.

A consideration of the underlying circumstances surrounding the stipulation that gave rise to the wording of the Decree, together with such establishes that defendant's interpretation is correct. In this regard, defendant invites the Court to consider the following:

(a) Under plaintiff's interpretation of paragraph 7, when the home is sold (an event in the same category as her remarriage), defendant must continue to make the mortgage payment. Obviously, such an interpretation must be rejected inasmuch as after sale of the home, there would be no mortgage payment.

(b) When a divorced woman remarries she thereby obtains an additional means of support through the earning capacity of her new husband. By reason thereof, when a Decree of Divorce provides for a change in support payments upon remarriage of the wife, it is logical that the change was intended to decrease rather than increase the support payments.

(c) The award of the marital domicile to the wife in a divorce proceeding, especially when she obtains custody of minor children, is intended to preserve shelter for the wife and children. If the woman later remarries, the home then becomes the residence of the new husband. By reason thereof, when a divorce decree dictates a change upon remarriage of the wife, it is logical to assume that the parties intended a decrease rather than an increase of the former husband's obligations to make the

house payment. Obviously defendant did not intend to provide shelter to plaintiff's new husband.

(d) The wording of paragraph 7 of the Decree, although ambiguous, strongly suggests that the obligation to make the house payment terminates upon plaintiff's remarriage. The relevant wording of paragraph 7 is as follows: "... On the occurrence of any one of these events [i.e., sale of the family home or plaintiff's remarriage], two-thirds of the house payment then made shall be converted to child support..." [emphasis added. The word "converted" means "... to change from one form to another" and "... to exchange for an equivalent." Webster's New Collegiate Dictionary, 1974 Edition. On the basis of this definition, if two-thirds of the house payment is "converted" to child support, there can no longer be a house payment.

D. SUPPORT OBLIGATIONS

According to plaintiff's Affidavit dated June 28, 1985 (copy attached hereto), the only claimed arrearage to that date was $1,487.50. According to the same Affidavit, the claimed arrearage began in February, 1985. Thus, for the purpose of this Memorandum, the computation of defendant's obligations and proof of payment will commence in February, 1985.

Paragraph 3 orders defendant to pay child support in the sum of $200 per month per child for a total of $800 per month. Paragraph 4 of the Decree provides that the child support shall increase each fiscal year (August 1st is the beginning of the fiscal year) by an amount of 8%. This order is reflected in

8/84 - 1008 480

Exhibit "C" to the affidavit of Cass Bettinger in computing his obligations from August, 1980 to August, 1984. In September, 1984, plaintiff remarried thereby implementing the provisions of paragraph 7 of the Decree. If paragraph 7 is construed in accordance with the contentions of defendant, this increased child support from $1,089 to $1,273 per month (see footnote five to Exhibit "C").

In January, 1985, custody of two of the four children was transferred to defendant thereby decreasing his child support obligations by fifty percent from $1,273 to $636.50. Thus, the annual increase in August, 1985 was equal to 108% of $636.50 or a total of $687. (See footnote 6 to Exhibit "C" of Bettinger affidavit.)

On the basis of the Decree and the subsequent events which triggered provisions of the Decree, defendant's total obligations for child support as of February 28, 1987 is $17,257.00.

Photocopies of the cancelled checks and the affidavit of Cass Bettinger (Exhibit "D") establish an overpayment of $618.00.

It is apparent that the overpayment occurred by reason of defendant's concern to protect his equity in the home. Thus, although realizing he was justified in paying a lesser amount, he continued to make the house payment to protect against foreclosure by the first mortgage holder.

E. PLAINTIFF IS INDEBTED TO DEFENDANT IN THE SUM OF AT LEAST $41,053.00 FOR DEFENDANT'S EQUITY IN THE FAMILY HOME.

Paragraph 7 of the Decree provides that defendant is awarded one-half of the equity in the family home to be computed on the basis of the value of the home "at the time of liquidation." The same paragraph awards defendant a lien to secure his equity.

Paragraph seven of the Decree further provides that the lien is "forecloseable" when plaintiff remarries. Plaintiff remarried in August, 1984.

Although the word "forecloseable" may effect the means by which defendant collects his equity, it clearly designates the date that the debt is due and owing. If a lien is "forecloseable" it is obviously due and owing regardless of whether foreclosure proceedings are initiated.

Inasmuch as plaintiff remarried in August, 1984, she has owed defendant one-half of the equity in the home since that date. However, plaintiff has ignored her obligations to defendant and focused only on defendant's obligations to her. Plaintiff falsely represented to the Office of Recovery Services that defendant owed her money in total disregard of her own obligations under the Decree. Defendant has been subjected to collection procedures in the expenditure of costs in attorneys' fees in order to resist collection efforts by the Office of Recovery Services.

Plaintiff and her new husband have enjoyed defendant's property rights by living in the home and refusing to contribute

to the mortgage payment.

According to the appraisal report of Jerry F. Kelgreen, and the mortgage payoff figure of $17,894.00, the total equity in the home as of August, 1984 is $82,106.00. Thus, plaintiff is liable to defendant for $41,053.00 and such debt has been due and owing since plaintiff's remarriage in AUgust, 1984. The figure should be increased in a sum equal to one-half of the increase in equity since August, 1984.

RESPECTFULLY SUBMITTED this 23 day of March, 1987.

Robert M. McDonald
Attorney for Defendant

CERTIFICATE OF PERSONAL SERVICE

I hereby certify that on the 23 day of March, 1987, I caused to be served a true and accurate copy of the foregoing Memorandum in Support of Relief Sought by Order to Show Cause by personally delivering by hand-delivery said copy to Mary C. Corporon, CORPORON & WILLIAMS, 1100 Boston Building, Salt Lake City, Utah 84111.

EXHIBIT 5

Robert M. McDonald (#2175)
Attorney for Defendant
47 West 200 South, Suite 450
Salt Lake City, Utah 84101
Telephone: (801) 359-0999

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

----ooo0ooo----

CAROLYN JOYCE BETTINGER aka CAROLYN BOIES,	:
Plaintiff,	: CORRECTED AFFIDAVIT OF CASS BETTINGER
-vs-	: Civil No. D-80-931
CASS BETTINGER,	: Judge Judith Billings
Defendant.	:

----ooo0ooo----

STATE OF UTAH)
:ss.
COUNTY OF SALT LAKE)

CASS BETTINGER, being first duly sworn, deposes and says:

1. I am the Defendant named in this action and have personal knowledge of all facts stated herein except as to those facts specifically stated to be based upon information and belief.

2. Since the entry of the Decree of Divorce in this matter, I have taken custody of two of the four children born of the marriage. In January, 1985, Michelle (then age 17) and Jonathon (then age 12) began residing with me.

3. During the last twelve months, Plaintiff has consistently refused to cooperate with me as to my visitation rights with respect to the two children who reside with Plaintiff: Christopher, age 16 and Nicholle, age 9. When visitation is requested, Plaintiff claims pre-existing plans involving said children during the designated visitation days.

4. Plaintiff remarried in August, 1984. I am informed, and on the basis of such information believe, that the marriage remains in existence as of the date of this Affidavit.

5. Prior to September 22, 1985, Plaintiff informed the Utah State Department of Social Services, Office of Recovery Services (hereinafter "Agency"), that I was in default in the payment of child support and contracted with said Agency to collect amounts in default. Said Agency thereafter served a Notice of Support Debt and Notice of Informal Settlement Conference. Copies of said notices are attached to my original affidavit as Exhibits "A" and "B" and incorporated herein by reference. I am informed by the Utah Office of Recovery Service, and on the basis of such information believe, that the Utah Office of Recovery Services has attempted to garnish my wages in order to enforce the Order and Judgment of March 24, 1986.

6. By reason of said Notice, I employed Robert M. McDonald, an attorney, to represent me before the Agency. I am informed that Mr. McDonald corresponded with the Agency and obtained a continuance of the hearing until the matter is considered by this

Court. Despite such correspondence, the Agency has attempted to collect the Judgment of March 24, 1986, and thereafter served a garnishment upon my employer.

7. When Plaintiff remarried in August, 1984, I claimed that I was entitled to a decrease in child support pursuant to the terms of the Decree and the change of custody. Plaintiff disputed my claim of reduction in support obligations. Despite my claim of entitlement to a reduction, I continued the monthly mortgage payment on the home for the sole purpose of protecting my equity in said home.

8. During the period beginning with the entry of the Decree in this matter to July, 1981, I paid Plaintiff the sum of $800.00 per month and paid all monthly installment payments on the home mortgage. The mortgage payment in August, 1984 was $275.00.

9. Dr. Willard Stratton sent a statement for orthodontic services performed during 1985 and 1986 to Plaintiff for payment. During the time the services were rendered, Plaintiff had an insurance policy that partially ($1,000) covered orthodontic services. It is my belief that the insurance company paid Plaintiff for the services and Plaintiff used the insurance payment for other purposes and has paid nothing to Dr. Stratton for the services. Dr. Stratton has made demand upon me for payment. I have paid $1,000 (one-half) of the bill as agreed.

10. Attached hereto as Exhibit "C" is a schedule showing what I claim to be the child support obligations since February, 1985 ~~the entry~~.

~~of the Decree in this matter.~~

11. Attached hereto as Exhibit "D" is a summary of all payments made to plaintiff since, ~~entry of the decree up to October, 1986. The exhibit will be updated prior to hearing.~~ February 1985.

DATED this 15 day of March, 1987.

Cass Bettinger

SUBSCRIBED AND SWORN to before me this 16th day of March, 1987.

NOTARY PUBLIC
Residing at Salt Lake City, Utah

My Commission Expires:

8-28-90

CERTIFICATE OF PERSONAL SERVICE

I hereby certify that on the 23rd day of March, 1987, I caused to be served a true and accurate copy of the foregoing Corrected Affidavit of Cass Bettinger by personally delivering by hand-delivery said copy to Mary C. Corporon, CORPORON & WILLIAMS, 1100 Boston Building, Salt Lake City, Utah 84111.

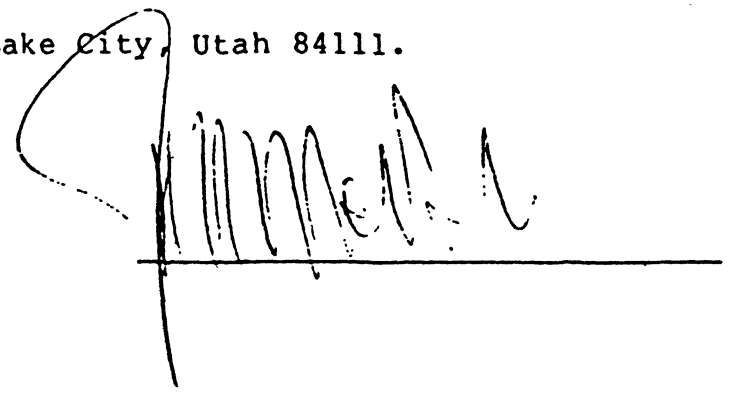


EXHIBIT "C"

TOTAL CHILD SUPPORT PAYMENTS ACCRUING
FROM FEBRUARY 1, 1985 TO FEBRUARY 28, 1987

Date	Amount
February, 1985	$ ~~636.50~~ - 0 -
March, 1985	636.50
April, 1985	636.50
May, 1985	636.50
June, 1985	636.50
July, 1985	636.50
August, 1985	687.00(8% Increase)
September, 1985	~~687.00~~ No pmt made for Sep. 1
October, 1985	687.00
November, 1985	687.00
December, 1985	687.00
January, 1986	687.00
February, 1986	687.00
March, 1986	687.00
April, 1986	687.00
May, 1986	687.00
June, 1986	687.00
July, 1986	687.00
August, 1986	742.00(8% Increase)
September, 1986	742.00
October, 1986	742.00
November, 1986	742.00
December, 1986	742.00
January, 1987	742.00
February, 1987	742.00
Total	$17,257.00

Aug 1, 84

EXHIBIT "D"

TOTAL PAYMENTS TO PLAINTIFF
FROM FEBRUARY 1, 1985 TO FEBRUARY 28, 1987

A. Payments to Prudential

Date	Amount	Check No.
2/1/85	$ 292.00	#1581
3/1/85	292.00	#136
4/5/85	292.00	#02
5/1/85	292.00	#119
6/5/85	292.00	#160
7/1/85	292.00	#187
8/1/85	292.00	#242
9/1/85	292.00	#275
10/5/85	292.00	#327
11/1/85	292.00	#373
12/5/85	292.00	#123
1/5/86	292.00	#174
2/6/86	333.00	#110
3/5/86	333.00	#152
4/1/86	333.00	#199
5/1/86	333.00	#248
6/1/86	333.00	#321
7/1/86	333.00	#332
8/5/86	333.00	#381
9/3/86	333.00	#429
11/1/86	333.00	#552
12/5/86	333.00	#605
1/8/87	333.00	#667
2/1/87	310.00	#717
Total	$7,810.00	

B. Payments to Plaintiff

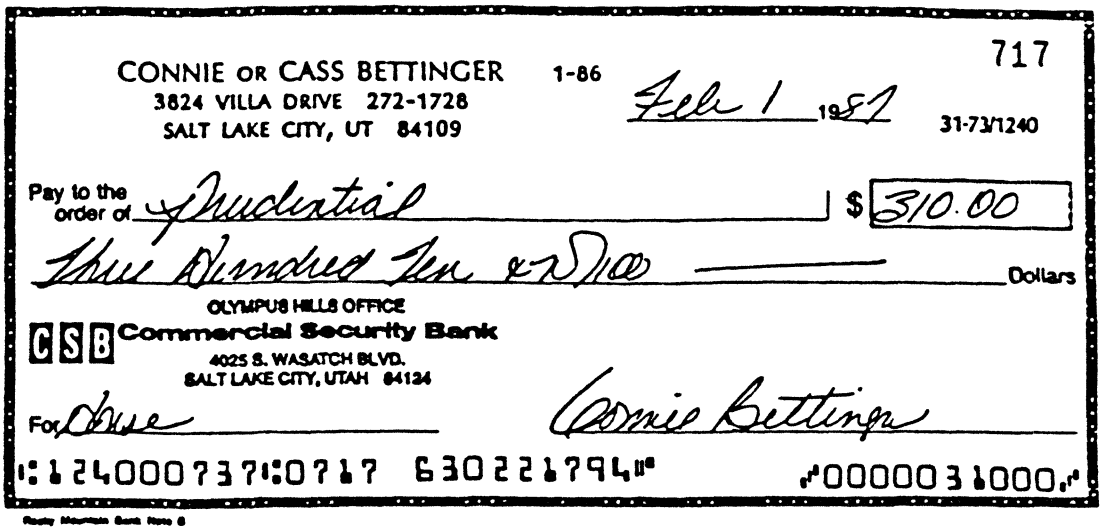
Date	Amount	Check No.
3/1/85	$ 211.50	#134
3/15/85	211.50	#153
4/9/85	211.50	#04
4/15/85	212.00	#114
5/1/85	212.00	#118
5/15/85	212.00	#141
6/1/85	212.00	#158
6/18/85	212.00	#180
7/1/85	212.00	#195
7/15/85	212.00	#214
8/1/85	212.00	#241
8/17/85	212.00	#269
9/15/85	212.00	#297
10/5/85	211.00	#325
10/15/85	211.00	#347
11/1/85	212.00	#374
11/23/85	212.00	#103
12/5/85	212.00	#124
12/15/85	212.00	#148
1/1/86	212.00	#175
2/1/86	212.00	#101
2/15/86	212.00	#121
3/4/86	212.00	#148
3/15/86	212.00	#174
4/1/86	212.00	#198
4/15/86	212.00	#219
5/1/86	212.00	#249
5/17/86	212.00	#276
6/1/86	212.00	#320
6/15/86	212.00	#334
7/1/86	212.00	#333
7/19/86	212.00	#366
8/8/86	228.70	#382
8/20/86	237.00	#407
9/3/86	237.00	#428
9/18/86	237.00	#461
10/5/86	237.00	#500
10/15/86	237.00	#532
11/1/86	237.00	#549
11/15/86	237.00	#573
12/1/86	237.00	#597
12/20/86	237.00	#647

72 pmts missing

No pmt

	1/1/87	237.00	#700
	1/15/87	237.00	#687
	2/1/87	237.00	#713*
	Total	$10,065.20	
Total Payments to Plaintiff		$10,065.20	
Total Payments to Prudential		$ 7,810.00	
Total		$17,875.20	

*Made payable to Office of Recovery Services



CONNIE OR CASS BETTINGER
3824 VILLA DRIVE 272-1728
SALT LAKE CITY, UT 84109

1-86

717

Feb 1 1981

31-73/1240

Pay to the order of Prudential $ 310.00

Three Hundred Ten & 00 Dollars

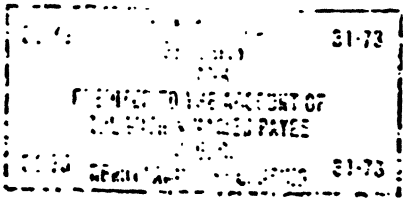
OLYMPUS HILLS OFFICE
CSB Commercial Security Bank
4025 S. WASATCH BLVD.
SALT LAKE CITY, UTAH 84124

For Dues

Connie Bettinger

⑆124000737⑆0717 630221794⑈ ⑈00000310000⑈

Rocky Mountain Bank Note ®



DATE-[illegible] SFO-[illegible] ACCT-[illegible]

CONNIE OR CASS BETTINGER
3824 VILLA DRIVE 272-1728
SALT LAKE CITY, UTAH 84109
186

667

Jan 8 1987 31-73/1240

Pay to the order of Industrial Contract $ 333.00

Three Hundred Thirty Three Dollars

OLYMPUS HILLS OFFICE
CSB Commercial Security Bank
4025 S. WASATCH BLVD.
SALT LAKE CITY, UTAH 84124

For _____ Connie Bettinger

⑆124000737⑆0667 630221794⑈ ⑈0000033300⑈

Rocky Mountain Bank Note ®

#023592661-00

CONNIE OR CASS BETTINGER
3824 VILLA DRIVE 272-1728
SALT LAKE CITY, UTAH 84109
186

700

EBH 017 Jan 1 1987 31-73/1240

Pay to the order of Carolyn Boise FEB 11 1987 $ 231.00

Two Hundred Thirty One & 00/100 Dollars

OLYMPUS HILLS OFFICE
CSB Commercial Security Bank
4025 S. WASATCH BLVD.
SALT LAKE CITY, UTAH 84124

3 2 1 0 2 5 7
116116

For _____ Connie Bettinger

⑆124000737⑆0700 630221794⑈ ⑈0000023100⑈

Rocky Mountain Bank Note ®

#023592661-00

CONNIE OR CASS BETTINGER
3824 VILLA DRIVE 272-1728
SALT LAKE CITY, UTAH 84109
186

68

EBH 017 Jan 15 1987 31-73/124

Pay to the order of Carolyn Boise FEB 11 1987 $ 231.00

Two Hundred Thirty One & 00/100 Dollars

OLYMPUS HILLS OFFICE
CSB Commercial Security Bank
4025 S. WASATCH BLVD.
SALT LAKE CITY, UTAH 84124

3 2 1 0 2 5 7
116116

For LS Child Support Connie Bettinger

⑆124000737⑆0687 630221794⑈ ⑈0000023100⑈

Rocky Mountain Bank Note ®

Use #023592661-1 00

CONNIE OR CASS BETTINGER
3824 VILLA DRIVE 272-1728
SALT LAKE CITY, UT 84109
1-86

713

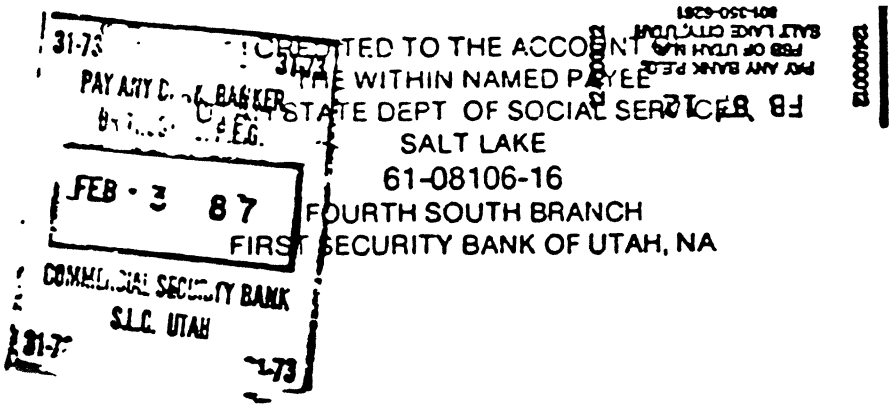
Feb 1 1987 31-73/1240

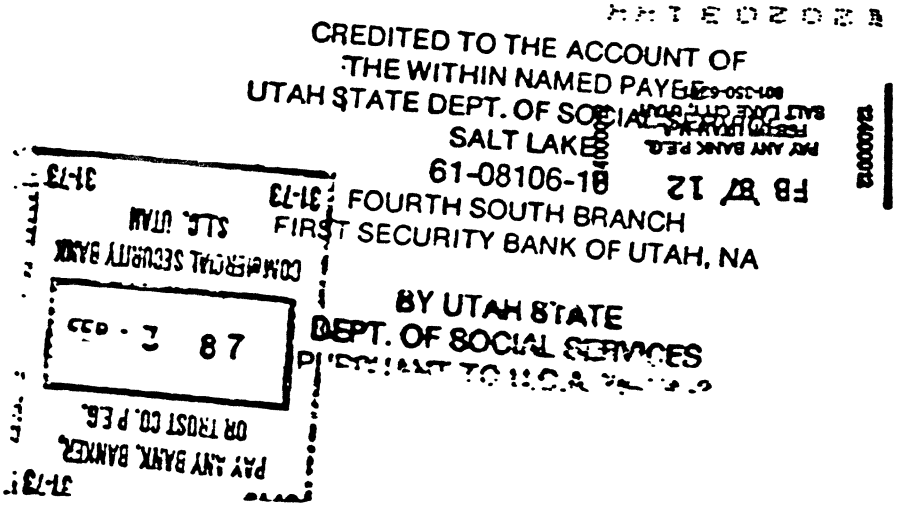
Pay to the order of Office of Recovery Services $ 231.00

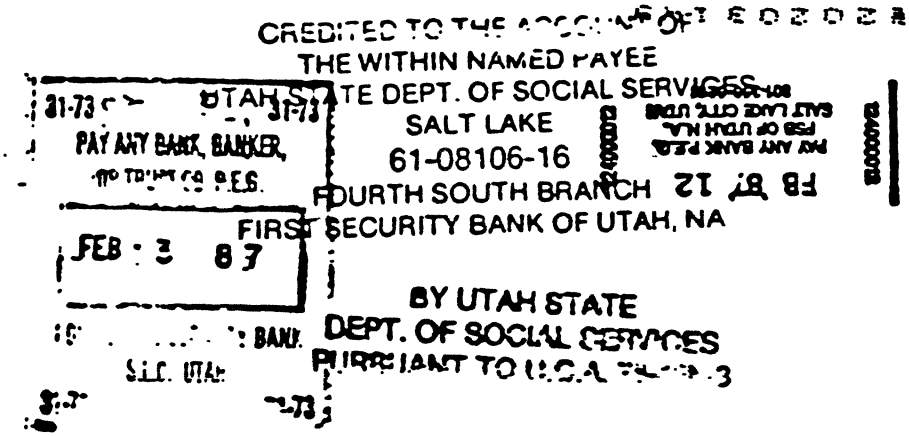
Two Hundred Thirty One & 00/100 Dollars

OLYMPUS HILLS OFFICE

3 2 1 0 2 5 7


CREDITED TO THE ACCOUNT OF
THE WITHIN NAMED PAYEE
STATE DEPT OF SOCIAL SERVICES
SALT LAKE
61-08106-16
FOURTH SOUTH BRANCH
SECURITY BANK OF UTAH, NA
PAY ANY BANK, BANKER,
FEB - 3 87
COMMERCIAL SECURITY BANK
S.L.C. UTAH


CREDITED TO THE ACCOUNT OF
THE WITHIN NAMED PAYEE
UTAH STATE DEPT. OF SOCIAL SERVICES
SALT LAKE
61-08106-16
FOURTH SOUTH BRANCH
FIRST SECURITY BANK OF UTAH, NA
BY UTAH STATE
DEPT. OF SOCIAL SERVICES
PURSUANT TO U.C.A.
PAY ANY BANK, BANKER,
FEB - 3 87
COMMERCIAL SECURITY BANK
S.L.C. UTAH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CONNIE OR CASS BETTINGER
3824 VILLA DRIVE 272-1728
SALT LAKE CITY, UTAH 84109

NE 202359261R/ 573

ESP 001 DEC 1 1986

186

Nov 15 1986 31-73/1240

Pay to the order of Carolyn Bates $ 232.00

Two Hundred Thirty Two & no/100 Dollars

OLYMPUS HILLS OFFICE

CSB Commercial Security Bank
4025 S. WASATCH BLVD.
SALT LAKE CITY, UTAH 84124

For _____ Connie Bettinger

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CONNIE OR CASS BETTINGER
3824 VILLA DRIVE 272-1728
SALT LAKE CITY, UTAH 84109

605

186

Dec 5 1986 31-73/1240

Pay to the order of Prudential Contract $ 232.00

Two Hundred Thirty Three & no/100 Dollars

OLYMPUS HILLS OFFICE

CSB Commercial Security Bank
4025 S. WASATCH BLVD.
SALT LAKE CITY, UTAH 84124

For _____ Connie Bettinger

1:124000737:0605 630221794 #0000033300

CONNIE OR CASS BETTINGER
3824 VILLA DRIVE 272-1728
SALT LAKE CITY, UTAH 84109

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186

Dec 1 1986 31-73/1240

Pay to the order of Carolyn Bates $ 232.00

Two Hundred Thirty Two & no/100 Dollars

OLYMPUS HILLS OFFICE

CSB Commercial Security Bank
4025 S. WASATCH BLVD.
SALT LAKE CITY, UTAH 84124

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For Child Support Connie Bettinger

1:124000737:0597 630221794 #0000023200

CONNIE OR CASS BETTINGER
3824 VILLA DRIVE 272-1728
SALT LAKE CITY, UTAH 84109

647

186

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JAN 05 1987

Pay to the order of Carolyn Bates $ 231.00

Two Hundred Thirty Two & no/100 Dollars

OLYMPUS HILLS OFFICE

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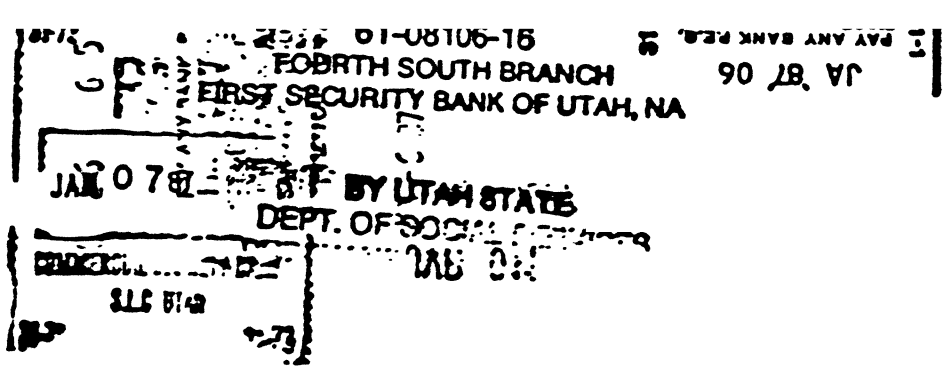
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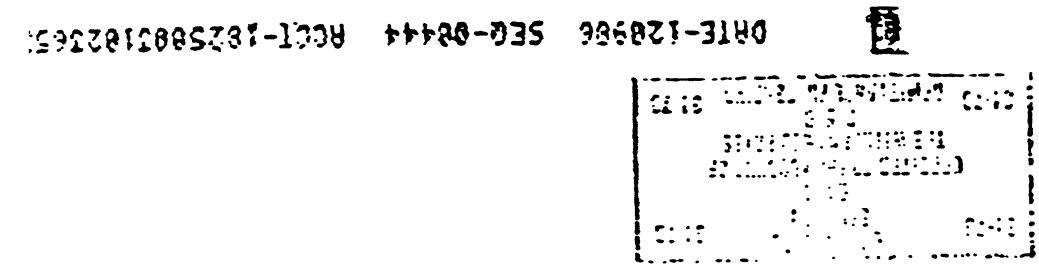
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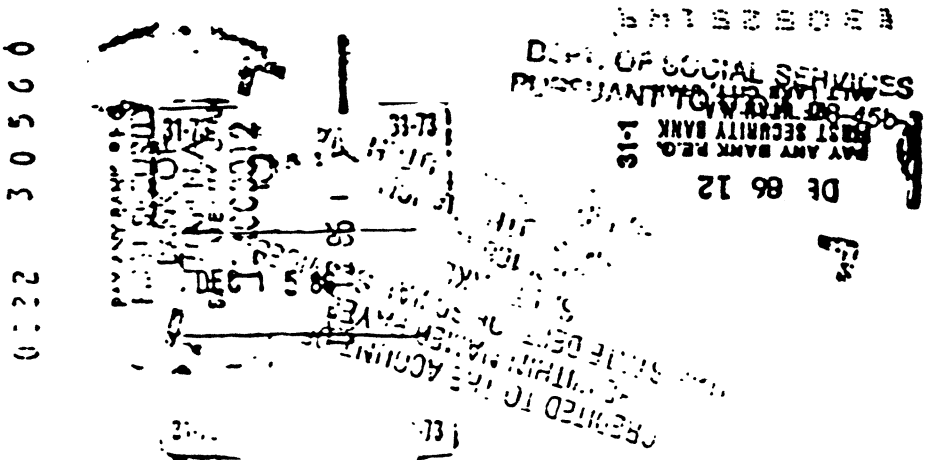
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CONNIE or CASS BETTINGER
3824 VILLA DRIVE 272-1728
SALT LAKE CITY, UTAH 84109
186

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Oct 5 1986 31-73/1240

Pay to the order of Carolyn Bories $ 237.00

Two Hundred Thirty Seven and 00/100 Dollars

OLYMPUS HILLS OFFICE
CSB Commercial Security Bank
4025 S WASATCH BLVD.
SALT LAKE CITY, UTAH 84124

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For Child Support Connie Bettinger

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CONNIE or CASS BETTINGER
3824 VILLA DRIVE 272-1728
SALT LAKE CITY, UTAH 84109
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Oct 15 1986 31-73/1240

NOV 04 1986

Pay to the order of Carolyn Bories $ 237.00

Two Hundred Thirty Seven and 00/100 Dollars

OLYMPUS HILLS OFFICE
CSB Commercial Security Bank
4025 S. WASATCH BLVD.
SALT LAKE CITY, UTAH 84124

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For Child Support Connie Bettinger

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CONNIE or CASS BETTINGER
3824 VILLA DRIVE 272-1728
SALT LAKE CITY, UTAH 84109
186

552

Nov 1 1986 31-73/1240

Pay to the order of Prudential Contract $ 333.00

Three Hundred Thirty Three and 00/100 Dollars

OLYMPUS HILLS OFFICE
CSB Commercial Security Bank
4025 S. WASATCH BLVD.
SALT LAKE CITY, UTAH 84124

For Connie Bettinger

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CONNIE or CASS BETTINGER
3824 VILLA DRIVE 272-1728
SALT LAKE CITY, UTAH 84109
186

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Nov 1 1986 31-73/1240

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Pay to the order of Carolyn Bories $ 237.00

Two Hundred Thirty Seven and 00/100 Dollars

OLYMPUS HILLS OFFICE
CSB Commercial Security Bank
4025 S. WASATCH BLVD.
SALT LAKE CITY, UTAH 84124

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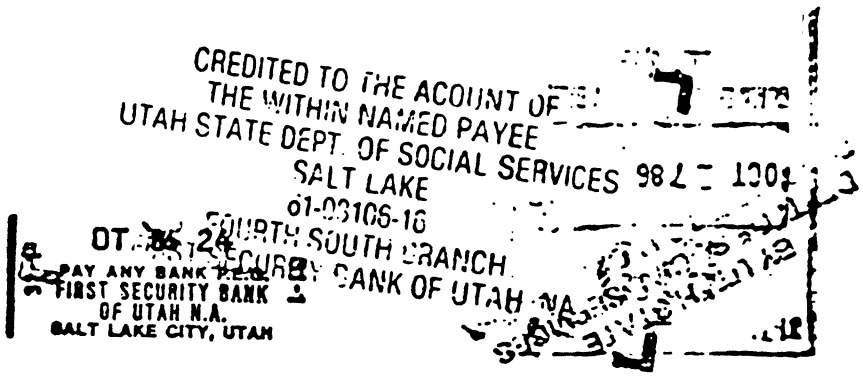
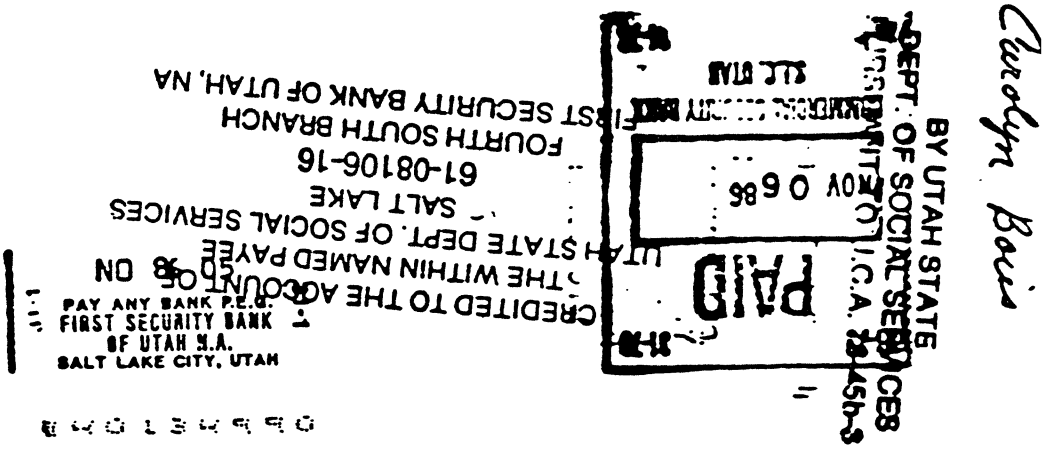
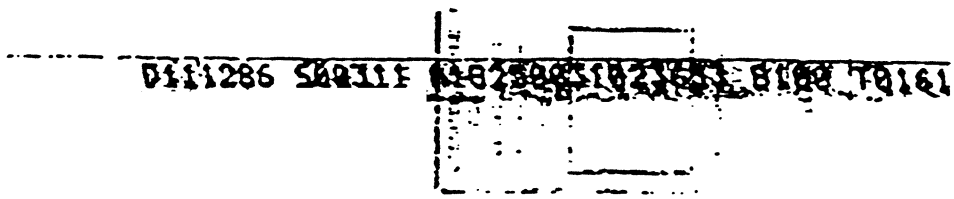
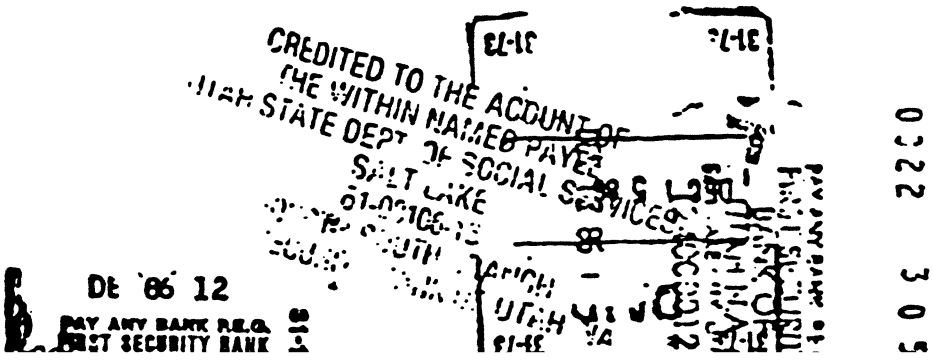
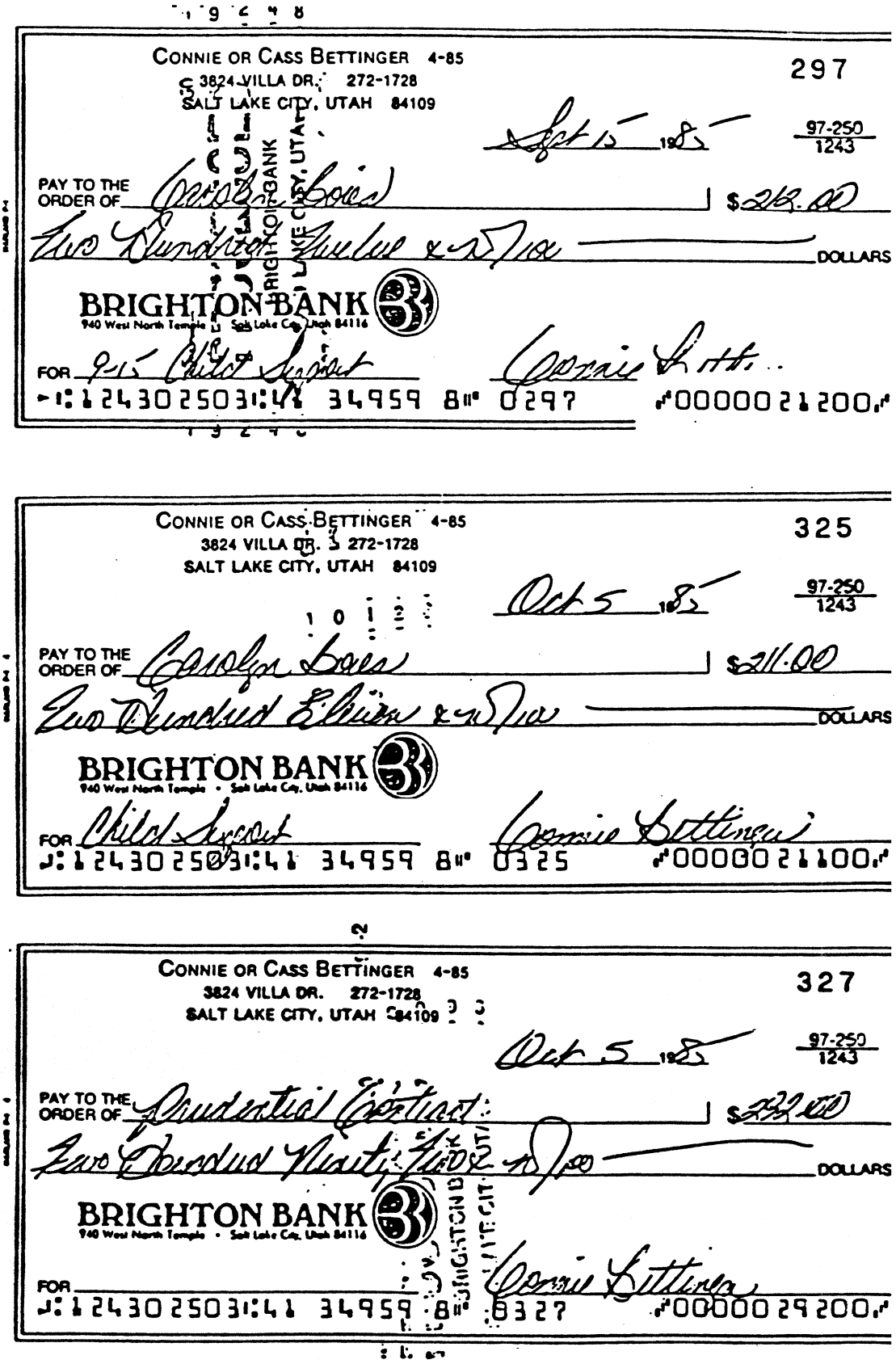




Carolyn Davis







CONNIE OR CASS BETTINGER 4-85
3824 VILLA DR. 272-1728
SALT LAKE CITY, UTAH 84109

297

Sept 15 1985

97-250
1243

PAY TO THE ORDER OF Carolyn Bates $ 262.00

Two Hundred Sixty Two and no/100 DOLLARS

BRIGHTON BANK
940 West North Temple • Salt Lake City, Utah 84116

FOR 9-15 Child Support Connie Bettinger

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CONNIE OR CASS BETTINGER 4-85
3824 VILLA DR. 272-1728
SALT LAKE CITY, UTAH 84109

325

Oct 5 1985

97-250
1243

PAY TO THE ORDER OF Carolyn Bates $ 211.00

Two Hundred Eleven and no/100 DOLLARS

BRIGHTON BANK
940 West North Temple • Salt Lake City, Utah 84116

FOR Child Support Connie Bettinger

⑆124302503⑆41 34959 8⑈ 0325 ⑈00000211⑆00⑈

CONNIE OR CASS BETTINGER 4-85
3824 VILLA DR. 272-1728
SALT LAKE CITY, UTAH 84109

327

Oct 5 1985

97-250
1243

PAY TO THE ORDER OF Prudential Carfinco $ 292.00

Two Hundred Ninety Two and no/100 DOLLARS

BRIGHTON BANK
940 West North Temple • Salt Lake City, Utah 84116

FOR Connie Bettinger

⑆124302503⑆41 34959 8⑈ 0327 ⑈00000292⑆00⑈

work full rights to balance
due - Rec. 9/23
Carolyn Lee
222 407

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SALT LAKE CITY
AY ANY BANK
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PAY ANY BANK
UNIVERSITY OF UTAH
CREDIT UNION
3088 SOUTH 1300 EAST
SALT LAKE CITY, UT 84106
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CREDITED TO THE ACCOUNT
OF THE WITHIN NAMED PAYEE
13 SEP 23 1985 13
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CREDITED TO THE ACCOUNT
OF THE WITHIN NAMED PAYEE
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CREDIT UNION

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work full rights to
balance due. Rec 9/9
Carolyn Lee
222407 SD 7
CP 7

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

* * *

EXHIBIT 6

CAROLYN JOYCE (BETTINGER) BOIES,	)	
	)	
PLAINTIFF,	)	CIVIL NO. D-80-931
-VS-	)	ORDER TO SHOW CAUSE, EVIDENTIARY HEARING
CASS BETTINGER,	)	
DEFENDANT.	)	

* * *

BE IT REMEMBERED THAT ON TUESDAY, THE 24TH DAY OF MARCH, 1987, COMMENCING AT THE HOUR OF 9:20 O'CLOCK A.M., THE ABOVE-ENTITLED MATTER CAME ON FOR HEARING IN THE COURTROOM OF THE THIRD JUDICIAL DISTRICT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH; SAID CAUSE BEING HELD BY THE HONORABLE DAVID S. YOUNG, JUDGE IN THE THIRD JUDICIAL DISTRICT COURT, STATE OF UTAH.

* * *

APPEARANCES

FOR THE PLAINTIFF: MARY C. CORPORON
CORPORON & WILLIAMS
ATTORNEYS AT LAW
SUITE #1100 - BOSTON BUILDING
#9 EXCHANGE PLACE
SALT LAKE CITY, UTAH 84111

FOR THE DEFENDANT: ROBERT M. MC DONALD
ATTORNEY AT LAW
AMERICAN PLAZA III
47 WEST 200 SOUTH
SUITE #450
SALT LAKE CITY, UTAH 84101

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INDEX

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P R O C E E D I N G S

JUDGE YOUNG: THIS IS THE TIME SET FOR CONSIDERATION OF THE ISSUES INVOLVED IN THE CAROLYN JOYCE BETTINGER, NOW CAROLYN BOIES, VERSUS CASS BETTINGER.

ARE THE PARITES READY TO PROCEED?

MR. MC DONALD: DEFENDANT IS PREPARED, YOUR HONOR. DEFENDANT, MOVEANT.

JUDGE YOUNG: WOULD EACH OF THE COUNSEL FOR THE RECORD STATE YOUR NAME, PLEASE.

MR. MC DONALD: ROBERT M. MC DONALD FOR DEFENDANT.

MS. CORPORON: MARY CORPORON FOR THE PLAINTIFF.

JUDGE YOUNG: THANK YOU.

MR. MC DONALD: PURSUANT TO OUR DISCUSSION IN CHAMBERS, YOUR HONOR, PERHAPS IT WOULD BE BEST IF I COULD ADDRESS THE COURT; PROFFER WHAT EVIDENCE WE HAVE. IF THERE APPEARS TO BE A DISPUTE THAT THE COURT DEEMS MATERIAL TO THE DECISION WE HAVE ALL OF THE WITNESSES HERE AND PERHAPS COULD PUT ON TESTIMONY FOR THAT LIMITED PURPOSE.

JUDGE YOUNG: THAT WOULD BE FINE. IS THAT ACCEPTABLE WITH YOU, MS. CORPORON?

MS. CORPORON: YES, YOUR HONOR.

JUDGE YOUNG: THANK YOU.

MR. MC DONALD: YOUR HONOR, I THINK DESPITE THE MANY ISSUES RAISED BY THE ORDER TO SHOW CAUSE THERE ARE BASICALLY, AS WE DISCUSSED IN CHAMBERS, FOUR CATEGORIES, THE FIRST BEING

VISITATION. I THINK THE COURT HAS, THROUGH ITS REVIEW OF THE FILE, HAS A PRETTY GOOD CONCEPT AS TO WHAT THE PROBLEM IS THERE. AND AS I'VE INDICATED, IF THE COURT WOULD INDICATE ITS FEELING ON THAT ISSUE TO THE PARTIES AND IN THE WORDS THAT MIGHT PROMPT AND RESOLVE THIS PROBLEM SO THESE YOUNG PEOPLE CAN HAVE THE BENEFIT OF BOTH PARENTS, WE WOULD BE WILLING TO WAIVE THE CONTEMPT OF COURT CITATION THAT WE HAD IN THERE, AT LEAST WITHOUT PREJUDICE, SO THAT IF THE PROBLEM PERSISTS THAT WE WOULD BE ENTITLED TO COME BACK AND AT THAT TIME ASSERT THE CONTEMPT.

JUDGE YOUNG: IS THE CURRENT ORDER OF VISITATION REASONABLE AND LIBERAL OR IS IT SPECIFIC?

MR. MC DONALD: I THINK IT'S REASONABLE AND LIBERAL. DEFENDANT SHALL HAVE REASONABLE VISITATION WITH EACH OF THE CHILDREN UPON REASONABLE NOTICE IS BASICALLY THE WORDING.

JUDGE YOUNG: OKAY.

MR. MC DONALD: WERE MR. BETTINGER TO TAKE THE STAND HE WOULD TESTIFY THERE HAS BEEN SIGNIFICANT PROBLEMS AND WHENEVER HE ATTEMPTS TO EXERCISE THE VISITATION HE'S ADVISED THE CHILDREN HAVE OTHER PLANS OR IS IN SOME MANNER INCONSISTENT WITH PRIOR PLANS. WE FEEL THAT THE VISITATION IS OF CRITICAL IMPORTANCE AND SHOULD OUTWEIGH THOSE PRE-EXISTING OR CLAIMED PRE-EXISTING COMMITMENTS.

JUDGE YOUNG: OKAY. THE NEXT ISSUE?

MR. MC DONALD: NEXT, YOUR HONOR, I BELIEVE WE HAVE TO

RESOLVE THE CHILD SUPPORT OBLIGATIONS. TO SOME EXTENT IT'S ATTRIBUTABLE TO A DECREE THAT IS SOMEWHAT AMBIGUOUS BUT AS I'VE NOTED IN MY MEMORANDUM, YOUR HONOR, IT IS, AND WERE MR. BETTINGER CALLED TO THE STAND, HE WOULD TESTIFY AS TO THE SUBSTANCE OF NEGOTIATIONS WHICH LED TO THE AGREEMENT GIVING RISE TO THE DECREE. AND BASICALLY THOSE NEGOTIATIONS WOULD ESTABLISH THAT IT WAS INTENDED, UPON THE PLAINTIFF'S REMARRIAGE THAT THE OBLIGATION WOULD NOT INCREASE BUT WOULD DECREASE--THAT HE WOULD BE RELIEVED OF THE HOUSE PAYMENT BUT HIS CHILD SUPPORT WOULD INCRESE BY TWO-THIRDS.

OBVIOUSLY, YOUR HONOR, MR. BETTINGER DID NOT INTEND UPON THE PLAINTIFF'S REMARRIAGE TO ASSIST IN THE SUPPORT OF HER NEW HUSBAND. THE PLAINTIFF, AS I UNDERSTAND, AND HER NEW HUSBAND OCCUPIED THAT HOME FOR MORE THAN A YEAR AFTER THEIR MARRIAGE DURING WHICH TIME THE PLAINTIFF CONTENDS THAT THE DEFENDANT WAS SUPPOSED TO MAKE THE HOUSE PAYMENT. I THINK IT'S CUSTOMARY IN THESE MATTERS THAT UPON REMARRIAGE, INASMUCH AS THE WIFE THEN OBTAINS THE ADDITIONAL SUPPORT OF HER NEW HUSBAND, THAT IT NORMALLY DECREASES NOT INCREASES.

MOREOVER, I THINK IT'S CRITICAL TO NOTE IN THAT LANGUAGE THAT HER REMARRIAGE IS IN THE SAME CATEGORY AS THE SALE OF THE HOME. SO IT SAYS, UPON REMARRIAGE OR SALE OF THE HOME THEN HIS OBLIGATION INCREASES TWO-THIRDS OF THE CHILD SUPPORT. SINCE THEY ARE BOTH IN THE SAME CATEGORY IT MUST MEAN THAT AFTER THAT TIME THE MORTGAGE PAYMENT IS NO LONGER

AN OBLIGATION OF THE DEFENDANT BECAUSE IF THE HOME HAD BEEN SOLD RATHER THAN HER REMARRIAGE THERE WOULDN'T BE A HOUSE PAYMENT.

ALSO, YOUR HONOR, I THINK JUST THE WORDING OF THE DECREE ITSELF BY USE OF THE WORD "CONVERT" CLEARLY ESTABLISHES THAT WHAT WAS THERE FOR A HOUSE PAYMENT WAS NOW "CONVERTED" INTO CHILD SUPPORT. CONVERT MEANS TO CHANGE ITS FORM, TO CHANGE INTO. OBVIOUSLY, IF IT CHANGES FROM A HOUSE PAYMENT TO CHILD SUPPORT THERE'S NO LONGER A HOUSE PAYMENT.

AFTER THE OCCURRENCE OF HER MARRIAGE, PLAINTIFF'S MARRIAGE, MR. BETTINGER OBVIOUSLY HAD HIS EQUITY BUILT UP IN THAT HOUSE AND IN ORDER TO PROTECT THAT EQUITY HE CONTINUED TO MAKE THE HOUSE PAYMENT, TO MAKE AN APPROPRIATE ADJUSTMENT IN THE CHILD SUPPORT.

JUDGE YOUNG: CAN YOU GIVE ME SOME FIGURES AS TO THE NUMBERS AS TO WHAT YOU ARE PROPOSING IN RELATION TO THE CHILD SUPPORT?

MR. MC DONALD: YOUR HONOR, I HAVE BEFORE THE COURT EXHIBIT 4-D WHICH WAS THE AFFIDAVIT THAT MRS. BOIES PUT IN THIS COURT DURING THE PRIOR ORDER TO SHOW CAUSE. PARAGRAPH 3 OF THAT AFFIDAVIT STATES, "DEFENDANT HAS FAILED TO REMAIN CURRENT IN HIS SUPPORT PAYMENTS AND HAS PAID AS FOLLOWS." THEN SHE INDICATES THE MONTHS OF THE ARREARAGES--FEBRUARY, MARCH--

JUDGE YOUNG: I AM AWARE OF THAT. WHAT I'M REALLY ASKING

IS WHAT IS YOUR PROPOSAL IN RELATION TO THE CHILD SUPPORT?

MR. MC DONALD: THAT THE COURT ENTER AN ORDER CLARIFYING THE PRIOR ORDER THAT THE TOTAL OBLIGATION FOR CHILD SUPPORT WOULD BE 237 PLUS THE HOUSE PAYMENT OF 310. ISN'T THAT RIGHT, MR. BETTINGER?

MR. BETTINGER: I THINK SO.

MR. MC DONALD: AT THIS POINT IN TIME--AND EXHIBIT 3-D GOES CLEAR BACK TO 1984 AND COMPUTES THE INCREMENTS IN HOUSE PAYMENTS, DEPENDING ON THE FACTS OF THE CASE, WHETHER IT IS THE 8 PERCENT INCREASE OR WHATEVER IN FOOTNOTES.

EXHIBIT 2-D ALSO SHOWS PAYMENTS WITH CHECK NUMBERS. WE'VE GOT EVERY CHECK THERE AND YOU CAN SEE THE NUMBER ON IT. THE TOTAL OBLIGATION NOW, IF THE DECREE IS CONSTRUED IN ACCORDANCE WITH WHAT WE CONTEND WOULD BE THAT FIGURE--237 PLUS $310.00.

JUDGE YOUNG: $310.00?

MR. MC DONALD: HHM-HHM. ASSUME THOSE OBLIGATIONS AT THAT LEVEL, YOUR HONOR, OUR COMPUTATIONS AS STATED IN MY MEMORANDUM SHOW AN OVERPAYMENT AT THIS STAGE OF $618.00.

JUDGE YOUNG: SO IF I UNDERSTAND YOUR POSITION IT IS ON THE CHILD SUPPORT THAT IT CONTINUE AT THE RATE OF $237.00 A MONTH, THAT THE HOUSE PAYMENT CONTINUE AT THE RATE OF $310.00 PER MONTH AND THAT THE COURT FIND THAT THE SUPPORT HAS BEEN PAID IN EXCESS IN THE AMOUNT OF THE 600--

MR. MC DONALD: YES, YOUR HONOR.

JUDGE YOUNG: --PLUS. OKAY, I UNDERSTAND YOUR POSITION.

MR. MC DONALD: THE NEXT ISSUE THAT MUST BE ADDRESSED, CATEGORIZING ALL OF THE ISSUES IN THE ORDER TO SHOW CAUSE, IS WHAT TO DO WITH THE HOME. THAT HOME HAS BEEN LISTED, AS I UNDERSTAND NOW FOR WHAT, THREE YEARS NOW. I TRIED TO GET THE INITIAL LISTING AGREEMENT. AND IT HASN'T SOLD.

THE THING THAT GAVE RISE TO CONCERN ON MY PART WAS I HAD MR. KELLGREEN, THE INDIVIDUAL WHO'S APPRAISED THE HOME, ARRANGE TO GO OUT AND LOOK AT IT AND PROVIDE AN APPRAISAL. WHEN HE WENT OUT THERE--HE FIRST CONTACTED THE REALTOR. AND WERE HE CALLED TO TESTIFY THIS WOULD BE THE SUBSTANCE OF HIS TESTIMONY, THE REALTOR SAID SHE DIDN'T HAVE ACCESS TO THE HOME.

JUDGE YOUNG: IS THE HOME LISTED NOW?

MR. MC DONALD: YES.

JUDGE YOUNG: THERE IS NO KEY BOX ON THE HOME?

MR. MC DONALD: NO KEY BOX.

JUDGE YOUNG: IS THERE ANY REASON--

MRS. BOIES: YES, THERE IS. WE HAVE HAD SEVERAL INCIDENTS OF NEIGHBORHOOD KIDS BREAKING INTO THE HOUSE. AND HAVING A KEY BOX ON THE HOUSE IS AN OPEN INVITATION THAT THE HOUSE IS EMPTY. AND WE'VE HAD TO REPAIR SOME DAMAGE ON IT.

JUDGE YOUNG: HAVE YOU EVER HAD THE KEY BOX ABUSED?

MRS. BOIES: NO, BUT WE DON'T NEED A KEY BOX NOW BECAUSE THERE IS A HOUSE SITTER IN THE HOUSE ANYWAY AND THERE'S OPEN ACCESS TO IT ALL THE TIME.

JUDGE YOUNG: ALL RIGHT. OKAY.

MR. MC DONALD: IN ANY EVENT, YOUR HONOR, WE'D ASK THE COURT IN THE LIGHT OF THE HISTORY RELATING TO THE SALE TO ENTER AN ORDER PROVIDING THAT THE DEFENDANT, MR. BETTINGER, MAY NOW, AT LEAST TRY HIS HAND IN MOVING THIS HOUSE, THAT HE BE ABLE TO SELECT THE REALTOR. WE CAN REVIEW THE PRESENT LISTING CONTRACT TO SEE IF WE ARE STILL BOUND BY IT. AT LEAST HE COULD CONTACT THE REALTOR WHO IS BOUND BY THAT LISTING AGREEMENT AND PROVIDE FOR THE VIEWING OF THE HOUSE AND HAVE THAT REALTOR REPORT TO HIM. IN THAT MANNER WE BELIEVE THAT WITH HIS EFFORTS WE MIGHT BE MORE SUCCESSFUL IN MOVING THAT HOUSE.

JUDGE YOUNG: OKAY.

MR. MC DONALD: I THINK THAT ORDER WOULD FACILITATE THE SALE.

ANOTHER THING, I AM NOT CERTAIN SINCE THE PLAINTIFF HAS NOT PROVIDED MR. BETTINGER WITH ANY INFORMATION ON IT, AS TO WHEN THE LISTING EXPIRES, WHAT THE ARRANGEMENT IS WITH THE PEOPLE THAT ARE THERE, WHETHER THEY ARE RECEIVING RENT. AND PERHAPS COUNSEL CAN ADDRESS THAT. IF, IN FACT, THEY ARE RECEIVING RENT I THINK THAT THAT RENT IS PART OF THE INCOME OF THE DEFENDANT AS WELL AS THE PLAINTIFF. IF THEY ARE NOT RECEIVING RENT WE SHOULD, AT LEAST, GIVE MR. BETTINGER THE OPPORTUNITY TO NEGOTIATE WITH THAT INDIVIDUAL AND, IF NECESSARY, RENT IT OUT. IF THERE'S A VANDALISM PROBLEM AT

LEAST GIVE HIM A CHANCE TO CONTROL THAT HOME AND AS FAR AS RENTAL, HOUSE SITTERS AND LISTING AGREEMENTS.

FINALLY, YOUR HONOR, ANOTHER ISSUE I THINK SHOULD BE CONSIDERED, AND IS RAISED BY THE ORDER TO SHOW CAUSE, IS COSTS AND ATTORNEY'S FEES. THIS HAS BEEN A VERY EXPENSIVE PROPOSITION FOR MR. BETTINGER. AND I HAVE PROVIDED THE COURT WITH EXHIBIT 7-D WHICH IS A LIST OF MY STATEMENT FOR SERVICES TO THIS DATE. AS THE COURT WILL SEE THERE MUCH OF THE PROBLEM HERE STEMS FROM THE PLAINTIFF CONTACTING THE OFFICE OF RECOVERY SERVICES, NOT INFORMING THEM THAT HE WAS INDEBTED TO THE PLAINTIFF FOR FORTY-ONE THOUSAND BUT MERELY NOTING, AND INCORRECTLY SO, THAT HE WAS INDEBTED TO HER FOR A COUPLE OF THOUSAND DOLLARS FOR FAILURE TO MAKE CHILD SUPPORT PAYMENTS. AS SHOWN BY OUR EXHIBITS THAT WAS NOT THE CASE.

SO AT THAT POINT THE OFFICE OF RECOVERY SERVICES, AND I HAVE THE NOTICES THAT THEY SENT TO MR. BETTINGER MARKED AS EXHIBIT 5, TELLING HIM THEY ARE GOING TO START DEDUCTING DIRECTLY FROM HIS INCOME THEREBY DISRUPTING HIS RELATIONSHIP WITH HIS EMPLOYER. HE, AT THAT POINT, CONTACTED ME. I SPENT CONSIDERABLE TIME IN DEALING WITH THE OFFICE OF RECOVERY SERVICES WHO DO A VERY GOOD JOB AT WHAT THEY DO. THEY ARE VERY IMPATIENT AND IT'S PRETTY HARD TO BUY THEM OFF REGARDLESS OF WHAT YOU TELL THEM. AND SO THAT TOOK A LOT OF WORK.

SECONDLY, AFTER THAT HAPPENED, SINCE I DIDN'T MOVE FAST ENOUGH FOR THEM, THEY GARNISHED MR. BETTINGER'S WAGES.

AGAIN, I HAD TO PREPARE AN AFFIDAVIT, COME DOWN AT THAT POINT IN TIME, JUDGE BILLINGS WAS ON THE BENCH. SHE REVIEWED THE ORDER AND STAYED ALL OF THAT COLLECTION PROCEDURE UNTIL THIS HEARING.

JUDGE YOUNG: I SAW THE ORDER.

MR. MC DONALD: AND, YOUR HONOR, I JUST DON'T THINK THAT WAS A GOOD FAITH. AND I REALIZE IN MOST INSTANCES IN THESE SETTINGS THE COURTS ARE RELUCTANT TO ASSESS ATTORNEY'S FEES AGAINST A WIFE OR FORMER WIFE, BUT BY THE SAME TOKEN, I JUST THINK THAT THERE HAS TO BE SOMETHING DONE IN THIS CIRCUMSTANCE TO EQUALIZE THIS BURDEN THAT'S BEEN THRUST ABOUT MR. BETTINGER. SHE DIDN'T COME DOWN HERE TO THE COURT FIRST TO ATTEMPT TO RESOLVE THIS AMBIGUITY, SHE MERELY ASSUMES WHAT IS IN HER FAVOR, REPORTS IT BY AFFIDAVIT AND THEN COMMENCES A PROCEEDING THAT HE HAS TO DEAL WITH IN ORDER TO SAVE HIS EMPLOYMENT AND IN ORDER TO PROTECT HIMSELF AGAINST WHAT I THINK IS AN ABSOLUTE ABUSE OF JUDICIAL PROCESS. AND I JUST DON'T THINK IN THOSE CIRCUMSTANCES THAT HE SHOULD HAVE TO PAY ALL OF THE ATTORNEY'S FEES.

I THINK WE'VE GOT THE VISITATION, WHICH I THINK WAS WRONGFULLY DENIED. THAT'S ONE REASON WE'RE HERE.

WE HAVE THE CHILD SUPPORT OBLIGATION, THAT I THINK CLEARLY NO ONE INTENDED WHEN SHE REMARRIED, WOULD INCREASE.

WE GOT THE HOME WHERE SHE HASN'T TRIED TO SELL IT. SHE OWES HIM MONEY AND SHE REPORTS TO OTHER PEOPLE HE OWES HER

MONEY. I THINK IT WOULD BE UNJUST IF HE WOULD HAVE TO BEAR THAT BURDEN AND EXPENSE.

JUDGE YOUNG: LET ME SEE IF I UNDERSTAND FROM YOUR EXHIBIT ON ATTORNEY'S FEES WHAT YOU ARE REQUESTING. IS THE FRONT PAGE ON THE STATEMENT FOR SERVICES ON 7-D $1814.00? IS THAT THE TOTAL AMOUNT YOU ARE REQUESTING OR IS THE--

MR. MC DONALD: NO, YOUR HONOR, THEY ARE CUMULATIVE. THOSE ARE THE ACTUAL BILLS I SENT HIM. AS YOU'LL SEE AFTER EACH ITEMIZATION OF TIME THERE IS A RATE OR AN AMOUNT FOR ATTORNEY'S FEES. IN SOME OF THE STATEMENTS THE BALANCE IS CARRIED FORWARD. OTHER TIMES HE PAID THE STATEMENT SO THE BALANCE WASN'T CARRIED SO THEY ARE ACTUALLY CUMULATIVE.

JUDGE YOUNG: I SEE.

MR. MC DONALD: YOU CAN SEE IT'S BEEN A REAL EXPENSIVE PROPOSITION.

ALSO, YOUR HONOR, I HAVE MARKED HERE AS AN EXHIBIT THE APPRAISAL OF MR. JERRY KELLGREEN--OR THOUGHT I HAD. IN ANY EVENT, IF CALLED TO TESTIFY MR. KELLGREEN WOULD STATE THAT THE VALUE OF THE HOME IS $100,000.00.

JUDGE YOUNG: CAN YOU TELL US, MISS CORPORON, WHAT THE LISTING PRICE HAS BEEN ON THE HOME?

MRS. BOIES: NINETY-THREE FIVE. AND THAT'S THE THIRD PRICE IT HAD.

JUDGE YOUNG: THAT'S FINE.

MR. MC DONALD: ALSO, YOUR HONOR, TO THE EXTENT IT WILL

ASSIST THE COURT, PRUDENTIAL, WHO HOLDS THE FIRST MORTGAGE, WE ASKED THEM FOR A PAYOFF AMOUNT. THAT IS SHOWN ON EXHIBIT 6-D. AND THE PRINCIPAL BALANCE AS OF THE DATE OF THIS DOCUMENT, WHICH IS I THINK MARCH, SOME TIME IN MARCH, IS THE PAYOFF AMOUNT--IT'S AS OF FEBRUARY 9TH, 1987--IS $17,893.00. THAT'S WHERE I COME UP WITH THE $41,000.00 DEBT.

JUDGE YOUNG: ALL RIGHT.

MR. MC DONALD: THE APPRAISAL IS 8-D.

JUDGE YOUNG: DOES THAT COVER THE ISSUES, MR. MC DONALD?

MR. MC DONALD: YES, YOUR HONOR, TO THE EXTENT THE COURT WISHES TO HEAR ANY TESTIMONY ON THAT, THE WITNESSES ARE HERE.

JUDGE YOUNG: I THINK WE WILL WAIT ON THAT. I WOULD LIKE YOU TO EACH REVIEW THE EXHIBITS THAT YOU ANTICIPATE HAVING INTRODUCED INTO EVIDENCE AND DETERMINE WHETHER THERE'S ANY OBJECTION TO THOSE.

MS. CORPORON: I HAVEN'T SEEN ANY OF THOSE EXHIBITS, YOUR HONOR.

JUDGE YOUNG: WHY DON'T YOU PROVIDE MISS CORPORON WITH THE OPPORTUNITY TO REVIEW THE EXHIBITS AND IF YOU WISH TO PROCEED, MISS CORPORON, AS TO YOUR CLIENT'S POSITION ON THE ISSUES THAT WE'VE DISCUSSED, VISITATION, CHILD SUPPORT, THE HOME AND COSTS AND FEES, AND IF THERE'S ANYTHING ELSE THAT NEEDS TO BE RESOLVED AT THIS POINT, YOU MAY ADDRESS YOURSELF TO THAT AS WELL.

MR. MC DONALD: IF I MAY INTERRUPT FOR ONE MINUTE. MY

CLIENT REMINDS ME I NEGLECTED TO NOTE ONE PROBLEM. THERE WAS AN ORTHODONTIST BILL.

JUDGE YOUNG: I'VE READ THE ORTHODONTIC MATTER.

MR. MC DONALD: IF THE COURT IS ADVISED ON THAT I WON'T TAKE FURTHER TIME. WE'D ALSO ASK FOR THAT.

JUDGE YOUNG: WILL YOU ADDRESS YOURSELF, MISS CORPORON, TO THE ORTHODONTIC BILL? IT IS REPRESENTED THERE WAS APPROXIMATELY $1,000.00 RECEIVED BY YOUR CLIENT THAT DID NOT GO TO THE ORTHODONTIC PAYMENT.

MS. CORPORON: THIS IS A NEW ISSUE TO ME. THAT WAS NOT RAISED IN THE ORDER TO SHOW CAUSE.

JUDGE YOUNG: IT IS DISCUSSED IN THE PLEADINGS.

MS. CORPORON: IN WHICH PLEADINGS, YOUR HONOR?

JUDGE YOUNG: WELL, IT IS DISCUSSED IN THOSE I HAVE READ. THAT'S ALL I CAN TELL YOU. IT MAY BE IN THE MEMORANDUM THAT WAS FILED LAST NIGHT WHICH YOU INDICATED YOU HAVE NOT HAD AN OPPORTUNITY TO REVIEW.

MS. CORPORON: THAT'S CORRECT, YOUR HONOR. SO I SIMPLY HAVE--

JUDGE YOUNG: FOR YOUR INFORMATION, THE REFERENCE TO THE ORTHODONTIC BILL IS THAT THE DEFENDANT CLAIMS THAT THERE WAS DENTAL COVERAGE IN THE AMOUNT OF APPROXIMATELY $1,000.00 WHICH HE CLAIMS THAT YOUR CLIENT RECEIVED THE THOUSAND DOLLARS, DID NOT APPLY IT TO THE DOCTOR'S BILL AND THE DOCTOR HAS CONTINUED TO BILL HIM FOR THAT AMOUNT.

MRS. BOIES: THIS IS ALL NEWS TO ME. IF I RECEIVED INSURANCE PAYMENTS I DEPOSITED THOSE INSURANCE PAYMENTS. I DON'T RECALL ANY TO THE DENTIST THAT I DIDN'T PAY. I'M NOT SAYING THAT'S NOT POSSIBLE BUT THIS IS ALL NEWS TO ME. I DON'T KNOW ANYTHING ABOUT THIS AT ALL.

JUDGE YOUNG: ALL RIGHT. MISS CORPORON, IF YOU WILL GO AHEAD AND ADDRESS THE ISSUES THAT HAVE BEEN DISCUSSED, PLEASE.

MS. CORPORON: YES, YOUR HONOR. FIRST OF ALL WITH REGARD TO THE HOUSE ISSUE, THE HOME. SHE WAS MARRIED IN AUGUST OF 1984, REMARRIED. AND THAT'S THE TRIGGERING, THE FIRST TRIGGERING EVENT TO OCCUR UNDER THE DECREE. THE HOME HAS BEEN CONTINUOUSLY LISTED FOR SALE SINCE AUGUST OF 1984. SHE AND HER NEW HUSBAND OCCUPIED THE HOME FOR EXACTLY ONE YEAR AFTER AUGUST OF 1984 AND THEN THEY CEASED TO OCCUPY IT.

A PROBLEM WE'VE HAD WITH SELLING THE HOME IS THE ROOF COLLAPSED IN THE SUMMER OF 1986 WHICH HAD TO BE REPAIRED AND WAS REPAIRED TOTALLY AT HER EXPENSE.

THE HOUSE HAS HAD A HOUSE SITTER LIVING IN IT FOR QUITE SOME TIME NOW. SHE STATES TO ME SHE'S HAVING SOMEONE LIVING THERE RENT FREE TO TAKE CARE OF THE HOME FOR SEVERAL REASONS. SHE NEEDED SOMEONE WHO COULD AGREE TO MOVE OUT IMMEDIATELY IF SHE HAD A BUYER, SOMEONE WHO WOULD AGREE THAT SHE COULD TRUST TO KEEP THE HOUSE IN A SHOWABLE CONDITION, AND WOULD AGREE TO SHOW THE HOME, AND SOMEONE WHO WOULD HAVE

A KEY AVAILABLE THERE AND ALSO--

JUDGE YOUNG: WHO IS THE HOUSE SITTER?

MRS. BOIES: HIS NAME IS ELI DURAN. HE IS A GRADUATE STUDENT AT THE UNIVERSITY OF UTAH.

JUDGE YOUNG: DURAN?

MRS. BOIES: D-U-R-A-N.

MS. CORPORON: ALSO, IN ORDER TO INSURE THE HOME IT HAD TO BE OCCUPIED AND, THEREFORE, SHE'S HAD THE HOUSE SITTER. IT WAS HER OPINION, AND SHE WOULD TESTIFY, THAT HAVING A REGULAR RENTER IN THE HOME WOULD NOT BE EFFECTIVE WHEN THEY ARE TRYING TO SELL IT BECAUSE SOMEONE WHO'S NOT THERE UNDER A VERY SPECIAL UNDERSTANDING WHO THINKS THAT THEY ARE PAYING THE RENTAL VALUE OF THE HOME AND HAVE THE RIGHT TO OCCUPY UNDISTURBED AND IS NOT LIKELY TO COOPERATE WITH SHOWING THE HOME BECAUSE IT'S NOT IN THEIR BEST INTEREST TO HAVE THE HOUSE SOLD AND BE FORCED TO MOVE. AND THEY ARE NOT AS LIKELY TO KEEP THE HOUSE IN A SHOWABLE CONDITION AND TO COOPERATE WITH SHOWING. SO SHE WANTS TO HAVE SOMEBODY WHO KNEW JUST WHAT THE CIRCUMSTANCES WERE ON SHOWING THE HOME.

SHE WOULD OBJECT TO THE IDEA OF LEAVING THE ENTIRE LISTING ARRANGEMENT IN THE HANDS OF THE DEFENDANT. SHE BELIEVES THAT HE IS OUT OF TOWN 75 PERCENT OF THE TIME WITH HIS BUSINESS, THAT HE'S NOT GOING TO BE AVAILABLE TO SHOW THE HOME. SHE LIVES IN SALT LAKE CITY AND IS AVAILABLE VIRTUALLY 100 PERCENT OF THE TIME IF THERE IS AN OFFER THAT COMES IN OR

OR SOMEBODY HAS QUESTIONS OR NEEDS AN OWNER THERE TO SHOW IT.

SHE WOULD PROFFER THAT THE DEFENDANT HAS NEVER INQUIRED OF HER PERSONALLY WHAT THE STATUS IS ON THE HOME, WHO'S OCCUPYING IT, WHAT THE LISTING ARRANGEMENT IS AND SO FORTH. NO ONE CONTACTED HER, APPARENTLY, ABOUT THIS APPRAISOR WAS GOING TO COME OUT WHICH MAY HAVE ACCOUNTED FOR THE PROBLEMS WITH HAVING THE APPRAISOR GET INTO THE HOME.

SHE WOULD PROFFER SHE OFFERED TO CASH HIM OUT OVER A YEAR AGO FOR $20,000.00 AND THAT SHE HAS ALSO SENT A LETTER TO HIM AND INQUIRED--A LETTER DATED MARCH 6, 1987--INQUIRING WHETHER HE WOULD BE INTERESTED IN ACCEPTING AN OFFER WITH THE LEASE OPTION AND OUTLINING THE TERMS OF THE LEASE OPTION. SINCE MARCH 6TH SHE'S HAD NO RESPONSE TO THAT LEASE OPTION POSSIBILITY EITHER.

WE WOULD PROFFER AND WE BELIEVE THAT IF CROSS-EXAMINED THEIR WITNESS WOULD HAVE TO AGREE WITH THE BOARD OF REALTORS FIGURES WHICH APPEARED IN THE BUSINESS SECTION OF THE PAPER LAST SUNDAY TO THE EFFECT THAT IN 1986 ONLY 23.7 PERCENT OF THE HOMES LISTED IN THE SALT LAKE COUNTY AREA ACTUALLY SOLD DURING THAT YEAR. AND WE WOULD PROFFER HER TESTIMONY THAT HER--THE PROBLEM THAT SHE'S HAVING SELLING THE HOME IS A RESULT OF THE MARKET. SHE HAS IT LISTED BELOW WHAT THEY CONSIDERED THE APPRAISED VALUE TO BE AND YET THEY ARE NOT GETTING ANY OFFERS OTHER THAN THIS POSSIBLE LEASE OPTION THAT SHE'S RECENTLY INQUIRED ABOUT.

WE WOULD ASK THAT THEY SIMPLY LEAVE THE SITUATION AS IS, PERHAPS CONSIDER TO CONTINUING TO DROP THE PRICE UNTIL THE THING SELLS AND LEAVE THE OTHER CIRCUMSTANCES OF THE HOME AS THEY ARE. BUT OTHER THAN THAT THERE'S NOT MUCH THAT WE CAN DO TO FIND A BUYER OTHER THAN WHAT SHE'S BEEN DOING ALREADY.

WITH REGARD TO THE ISSUE OF VISITATION, AND MRS. BOIES HAS INDICATED TO ME SHE FEELS QUITE STRONGLY ABOUT THIS AND WOULD LIKE TO ADDRESS THE COURT PERSONALLY. I DON'T KNOW WHAT THE COURT'S VIEW IS ON THAT BUT I WOULD PROFFER IN HER BEHALF THAT THE DEFENDANT, SHE PERCEIVES THE DEFENDANT HAS INVOLVED THE CHILDREN CONTINUALLY IN THE DISPUTES BETWEEN THE PARTIES. AND I THINK IF YOU REVIEWED THE FILE YOU WILL NOTE THAT HIS PREVIOUS COUNSEL OF RECORD WAS OBTAINING AFFIDAVITS FROM THE CHILDREN AND GETTING THEM INVOLVED IN THIS LEGAL PROCEEDING. SHE INDICATES TO ME THE CHILDREN WERE ACTUALLY SUBPOENAED TO COURT ON ONE OCCASION IN THIS CASE AND SHE THINKS THAT A GREAT DEAL OF THE ANIMOSITY THAT EXISTS NOW AS FAR AS VISITATION IS CONCERNED IS OF HIS OWN MAKING.

SHE WOULD PROFFER SHE HAS ENCOURAGED THE VISITS; HE HAS TOLD THE CHILDREN THEMSELVES, IN HER PRESENCE, IF THEY DON'T WANT TO COME WITH HIM THEY DON'T HAVE TO. AND WE ARE DEALING HERE WITH A 45 YEAR OLD AND A 16 YEAR OLD. AND THEY HAVE OFTEN TAKEN HIM UP ON THAT OPPORTUNITY NOT TO COME AND VISIT WITH HIM.

SHE WOULD ALSO PROFFER THAT THE CHILDREN HAVE TOLD

HER REPEATEDLY THAT THEY ARE VERY UNCOMFORTABLE WITH THEIR STEPMOTHER, THE DEFENDANT'S WIFE, THAT THEY FEEL UNCOMFORTABLE IN HER PRESENCE AND SHE BELIEVES THAT HAS SOMETHING TO DO WITH THEIR RELUCTANCE TO ENGAGE IN VISITATION.

AS I INDICATED IN CHAMBERS, I THINK ESPECIALLY WITH THE 16 YEAR OLD BOY WHO IS BIGGER THAN HIS MOTHER AND PHYSICALLY, FOR ALL INTENTS AND PURPOSES AN ADULT, IT IS IMPOSSIBLE FOR HER TO FORCE HIM INTO AN AUTOMOBILE IF HE DOESN'T WANT TO GET INTO THE AUTOMOBILE TO GO. AND SHE WOULD PROFFER THAT SHE HAS TOLD HIM TO GO, REQUESTED HIM TO GO, AND THAT HE HAS, ON OCCASION, REFUSED TO DO THAT. SHE HAS NEVER HERSELF TOLD THE DEFENDANT HE CAN NOT HAVE VISITATION WITH THE CHILDREN OR SHE WON'T LET THE CHILDREN GO.

WITH REGARD TO THE QUESTION OF CHILD SUPPORT IT WAS MY UNDERSTANDING THAT THIS MEMORANDUM THAT WAS SUBMITTED, I WOULD HAVE AN OPPORTUNITY TO RESPOND TO. THAT WAS APPARENTLY DELIVERED TO MY OFFICE LAST NIGHT AFTER 4:00 O'CLOCK. I LEFT MY OFFICE AT 4:00 AND I HAVE NOT SEEN THE MEMORANDUM REFERRED TO. IF I MAY SIMPLY DEFER MY ARGUMENTS ON THE CHILD SUPPORT TO MY MEMORANDUM I WOULD LIKE TO DO THAT, YOUR HONOR.

JUDGE YOUNG: ALL RIGHT.

MS. CORPORON: FINALLY, WITH REGARD TO THE QUESTION OF THE ATTORNEY'S FEES. WE WOULD PROFFER THAT SHE TOLD THE OFFICE OF RECOVERY SERVICES EVERYTHING ABOUT THE FACTS OF THIS CASE INCLUDING THE FACT THAT THE DEFENDANT HAD A LIEN ON THE HOME,

THAT THE HOME HADN'T SOLD AND HE HADN'T BEEN PAID HIS LIEN INTEREST. SHE BELIEVES THAT THERE IS A SUPPORT ARREARAGE EXISTING AT THIS TIME WHICH I WILL OUTLINE IN THE MEMORANDUM AND THAT SHE'S MADE THAT CLAIM IN GOOD FAITH. I THINK THAT EVERYONE CAN AGREE THAT THIS IS CERTAINLY AN UNUSUALLY WORDED DECREE. IT IS NOT AN EASY FORMULA TO CALCULATE UNDER THE PRECISE WORDING OF THE DECREE AND THAT SHE'S BEEN ACTING IN GOOD FAITH IN MAKING THAT CLAIM.

JUDGE YOUNG: WHAT DOES SHE CLAIM THE ARREARAGE AMOUNT IS?

MS. CORPORON: THROUGH MARCH HER CONTENTION IS THAT THE ARREARAGE IS $10,086.00.

JUDGE YOUNG: DO YOU HAVE AN AFFIDAVIT UPON WHICH YOU RELY TO BASE THAT?

MS. CORPORON: NOT AN AFFIDAVIT, YOUR HONOR. I HAVE AN ACCOUNTING WHICH SHE HAS SUPPLIED TO ME TODAY INDICATING HOW SHE ARRIVES AT THAT. I CAN ATTACH THAT AS PART OF MY MEMORANDUM WITH OUR ARGUMENT AS TO HOW WE ARRIVE AT THAT FIGURE.

JUDGE YOUNG: HAVE YOU SHOWN THAT TO MR. MC DONALD?

MS. CORPORON: NO.

JUDGE YOUNG: AND I ASSUME YOUR POSITION THEN IN RELATION TO COSTS AND FEES IS THAT EACH BEAR THEIR OWN.

MS. CORPORON: YES, YOUR HONOR--WELL, WE HAVE SUBMITTED A REQUEST IN FRONT OF THE COMMISSIONER WHEN THIS WAS HEARD BACK IN 1985 THAT HE PAY HER ATTORNEY'S FEES BECAUSE OF THE

SUPPORT ARREARAGE CLAIM. AND SINCE WE'VE BEEN BROUGHT BACK TO COURT ON THIS MATTER WE PERSIST IN THAT CLAIM THAT HE PAY OUR ATTORNEY'S FEES. HE EARNS APPROXIMATELY $80,000.00 PER YEAR, SHE WOULD PROFFER HER INCOME IS $11,000.00 PER YEAR. CLEARLY, THERE'S A DISPARITY IN INCOME. AND I THINK THAT THE HISTORY, THE PROCEDURAL HISTORY OF THIS CASE IS SOMEWHAT RELEVANT TO THE QUESTION OF ATTORNEY'S FEES.

SHE COMMENCED THIS ACTION FOR SUPPORT ARREARAGE IN MAY OF--BY CONTACTING HER PREVIOUS ATTORNEY, CON KOSTOPULOS, IN MAY OF 1985. AND THIS IS STILL DISPUTING OVER THE ORDER TO SHOW CAUSE THAT WAS HEARD ULTIMATELY IN SEPTEMBER OF 1985, A RULING OF THE COMMISSIONER IN DECEMBER OF 1985 AND NOW WE ARE STILL HERE IN COURT. SHE'S HAD ENUMERABLE HEARINGS AND, FRANKLY, IT'S OUR PERCEPTION THAT SOME OF THE DIFFICULTY AND THE DISPUTE IN COMING BACK TO COURT SO MANY TIMES HAS BEEN PROBLEMS WITH THE DEFENDANT AND HIS COUNSEL--

JUDGE YOUNG: WHAT DO YOU PROFFER AS THE REQUEST FOR ATTORNEY'S FEES FOR PAYMENT TO HER?

MS. CORPORON: YOUR HONOR, I'D SUBMIT THAT MY ATTORNEY'S FEES IN THIS MATTER WOULD BE $750.00.

JUDGE YOUNG: ANYTHING FURTHER?

MS. CORPORON: I'VE REPRESENTED HER IN THIS MATTER SINCE JANUARY OF 1986.

JUDGE YOUNG: ANYTHING FURTHER?

MS. CORPORON: YOUR HONOR, MRS. BOIES HAS AGAIN INDICATED

TO ME SHE WOULD LIKE TO ADDRESS THE COURT REGARDING VISITATION.

JUDGE YOUNG: ALL RIGHT. WOULD YOU RAISE YOU RIGHT HAND AND BE PUT UNDER OATH.

CAROLYN J. BOIES,

CALLED AS A WITNESS BY AND ON BEHALF OF THE PLAINTIFF, HAVING BEEN FIRST DULY SWORN TO TELL THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, TESTIFIED AS FOLLOWS:

JUDGE YOUNG: WHAT'S YOUR TESTIMONY IN RELATION TO VISITATION?

MRS. BOIES: THIS BUSINESS WITH THE VISITATION HAS BEEN A PROBLEM FOR A LONG, LONG TIME. EVER SINCE THIS DIVORCE CAME ABOUT. AND WE WENT THROUGH A PERIOD OF SEVERAL YEARS WHERE THERE WAS NO REASONABLE ASKING TIME. HE WOULD NOT CALL ME AND SAY CAN I HAVE THE CHILDREN COME AND VISIT ME THIS WEEKEND. HE WOULD SHOW UP AT MY DOOR OR CALL FIVE MINUTES BEFORE AND SAY I WANT TO TAKE THE KIDS OUT FOR PIZZA. WE HAD A PROBLEM WITH THIS FOR QUITE A WHILE.

THE LITTLEST CHILD, REPEATEDLY I WOULD DRIVE HER OVER TO HIS HOUSE TO HAVE HER CALL ME WITHIN AN HOUR CRYING TO COME PICK HER UP. I DON'T KNOW WHAT THE PROBLEM IS. IT APPARENTLY HAS NOT BEEN RESOLVED BETWEEN HIM AND THE YOUNGEST CHILD.

TIME AFTER TIME HE HAS CALLED UP THE CHILDREN, MADE AGREEMENTS FOR THEM TO GO TO VISITATION WITH HIM. I HAVE HELD THEM TO THAT VISITATION WHEN OTHER THINGS HAVE COME UP THAT THEY WANTED TO DO AND NOT GO TO VISITATION WITH THEIR DAD. I HAVE PERSONALLY DRIVEN THE CHILDREN OVER TO HIS HOUSE ONLY TO BE MET AT HIS DOOR BY HIM SAYING NO, THEY DON'T HAVE TO COME WITH ME IF THEY DON'T WANT TO. WHAT THEY WANT IS WHAT THEY CAN DO. THEY DON'T HAVE TO COME WITH ME IF THEY DON'T WANT TO.

IT GOT TO THE POINT WHERE I WAS IN THE HOT SEAT IF I ENFORCED THE VISITATION. AND IT GOT TO THE POINT WHERE I'M NOT GOING TO BE INVOLVED IN THIS ANY MORE. IF THE CHILDREN WANT TO GO, IF THEY DON'T WANT TO GO, I'M NOT GOING TO INTERFERE. THEY ARE ENCOURAGED TO GO. MY CHILDREN HAVE NEVER EVER BEEN TOLD BY ME OR ANYONE ELSE YOU CAN'T GO VISIT YOUR DAD.

AND MY 16 YEAR OLD SON IS HIGHLY MOBILE. HE'S GOT A GIRLFRIEND IN SANDY. HE GOES AND VISITS HER ALL THE TIME IN SPITE OF THE FACT HE DOESN'T HAVE A CAR. HE'S EQUALLY CAPABLE OF GOING TO VISIT HIS DAD ANY TIME HE WANTS TO. HE DOES. BUT THEY GO WHEN THEY WANT TO GO AND IF THEY DON'T WANT TO GO THEN THEY DON'T GO.

AND I'M BLAMED FOR THIS. HE SAYS THIS IS MY FAULT, I'M DENYING HIS VISITATION WITH THE CHILDREN WHEN THE FACT OF THE MATTER IS THE CHILDREN DO GO FOR VISITATION BUT THEY DON'T

GO ALL THE TIME AND THEY DON'T GO IF THEY DON'T WANT TO GO. AND THE PRESSURE IS PUT ON ME TO HAVE THEM READY TO GO AT 6:00 O'CLOCK ON FRIDAY NIGHT, WHICH IS VERY DIFFICULT TO DO WITH A 16 YEAR OLD BOY WHO'S GOT A DATE WITH HIS GIRLFRIEND AT 6:00 O'CLOCK FRIDAY NIGHT.

WHAT'S HAPPENED A NUMBER OF TIMES ALSO THE CHILDREN WILL JUST LEAVE THE HOUSE; THEY WILL GO OUT THE BACK DOOR AT 5:00 O'CLOCK, COME HOME AT 10:00 O'CLOCK. AND MANY TIMES I'VE DRIVEN THEM TO THEIR FATHER'S HOUSE AT 10:00 O'CLOCK UNDER PROTEST.

NOW, THAT'S MY POSITION IN THIS.

JUDGE YOUNG: IS THAT THE END OF YOUR TESTIMONY?

MRS. BOIES: FOR THE VISITATION.

MR. MC DONALD: CAN I HAVE MR. BETTINGER BRIEFLY RESPOND, YOUR HONOR?

CASS BETTINGER,

CALLED AS A WITNESS BY AND ON BEHALF OF THE DEFENDANT, HAVING BEEN FIRST DULY SWORN TO TELL THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, TESTIFIED AS FOLLOWS:

JUDGE YOUNG: DO YOU HAVE ANY RESPONSE TO THAT?

MR. BETTINGER: YES, I DO. THE VISITATION RELATIVE TO MY 16 YEAR OLD SON IS NOT A REAL SERIOUS PROBLEM BECAUSE I FEEL THAT HE'S OF AN AGE WHERE HE CAN MAKE UP HIS OWN MIND

AND HE'S NOT EASILY INTIMIDATED BY ANYONE ELSE. AND SO OCCASIONALLY HE WILL CALL ME AND WE WILL GET TOGETHER OR I WILL TRY TO GET AHOLD OF HIM WHICH IS DIFFICULT BECAUSE HE'S GONE A LOT. AND LIKE LAST NIGHT HE CALLED ME AND I PICKED HIM UP AND WE SPENT SOME TIME TOGETHER.

THE REAL PROBLEM HERE IS WITH MY TEN YEAR OLD DAUGHTER. I SAW HER FOR CHRISTMAS IN 1985, DID NOT SEE HER AGAIN UNTIL HER BIRTHDAY IN JANUARY OF 1987. SO I HAD NO VISITATION WITH HER FOR OVER A YEAR. DURING THAT TIME ON NUMEROUS OCCASIONS I WOULD CALL THE HOUSE TO REQUEST TO SPEAK WITH HER RELATIVE TO ARRANGING SOMETHING. AND WHENEVER MRS. BOIES WOULD ANSWER THE PHONE NICOLE WOULD EITHER BE ASLEEP, IN THE BATH, PLAYING WITH FRIENDS OR OTHERWISE UNAVAILABLE. WHENEVER MR. BOISE WOULD ANSWER THE PHONE AND NICOLE WAS HOME GENERALLY, I'D SAY 95 PERCENT OF THE TIME, SHE WOULD COME TO THE PHONE, WE'D HAVE A NICE CONVERSATION.

MY CONTENTION IS SIMPLY THAT NICOLE IS VERY CLOSE TO HER MOTHER, SHE DOESN'T WANT TO UPSET HER MOTHER, THAT SHE KNOWS VERY DEFINITELY THAT HER MOTHER DISAPPROVES OF HER VISITING ME AND THAT SHE RESPONDS ACCORDINGLY. MY CONTENTION IS THAT SHE FEELS INTIMIDATED AND SHE WOULD LIKE TO SPEND SOME TIME WITH ME. AND SO VERY SIMPLY ALL I'M SAYING IS THAT I BELIEVE THAT IT'S UNFAIR FOR ME NOT TO SEE MY TEN YEAR OLD DAUGHTER FOR OVER A YEAR.

JUDGE YOUNG: IS SHE TEN YEARS OLD NOW?

MR. BETTINGER: YES. SO I WOULD LIKE TO HAVE SOME SPECIFIC VISITATION ESTABLISHED SO THAT I CAN AT LEAST SEE HER ONCE IN A WHILE BECAUSE I DON'T THINK IT'S RIGHT FOR THAT TO TAKE PLACE.

JUDGE YOUNG: SO YOU ARE ASKING FOR A SPECIFIC ORDER OF VISITATION?

MR. BETTINGER: YES, I AM. AND I WOULD BE MORE THAN HAPPY, IF THE COURT WANTED TO APPOINT SOMEONE TO SIT DOWN WITH MY DAUGHTER AND TALK TO HER ABOUT THIS, TO DELVE INTO HER FEELINGS TO ESTABLISH WHAT EXACTLY THE PROBLEMS ARE. I'D BE MORE THAN HAPPY TO SEE THAT HAPPEN BUT I WOULD JUST LIKE TO SEE THIS ISSUE RESOLVED SO I CAN SPEND SOME TIME WITH MY DAUGHTER. IT'S AS SIMPLE AS THAT.

JUDGE YOUNG: I THINK I UNDERSTAND THE POSITIONS OF THE PARTIES IN RESPECT TO VISITATION. LET ME SAY TO BOTH OF YOU THAT THE COURT WILL DO EVERYTHING IN ITS POWER TO SEE THAT PARENTAL RIGHTS ARE PROTECTED. I BELIEVE THAT YOU, MRS. BOISE, HAVE AS MUCH RESPONSIBILITY TO SEE THAT NICOLE MAINTAINS A CONTINUING, HEALTHY, APPROPRIATE RELATIONSHIP WITH HER FATHER AS HE DOES TO CLAIM HIS RIGHT OF VISITATION.

MRS. BOIES: I AGREE.

JUDGE YOUNG: I BELIEVE THAT IS YOUR DUTY AND YOUR RESPONSIBILITY AND THAT YOU MUST DO EVERYTHING YOU CAN TO ENCOURAGE A NORMAL, HEALTHY RELATIONSHIP. SO I WANT YOU TO KNOW THAT FROM THE VERY BEGINNING.

I WILL ENTER A SPECIFIC ORDER OF VISITATION. IT'S COMMON THAT THIS COURT ENTERS ORDERS OF VISITATION EVERY OTHER WEEKEND AND ALTERNATING RED LETTER HOLIDAYS AND HALF OF CHRISTMAS AND SIX WEEKS IN THE SUMMER. I'M WILLING TO PUT ALL OF THAT IN AN ORDER IF YOUR COUNSEL CANNOT OTHERWISE AGREE. THAT WILL BE A SPECIFIC ORDER OF THIS COURT.

LET ME TELL YOU BOTH THAT MY PREFERENCE IS THAT VISITATION BE REASONABLE AND LIBERAL BECAUSE THAT LANGUAGE THEN WITH MATURE PEOPLE GIVES YOU THE OPPORTUNITY TO HAVE THIS WEEKEND AND NOT NEXT, OR TWO IN A ROW AND NOT THE NEXT TWO, OR PLAN YOUR FAMILY VACATIONS SO THAT NICOLE CAN GO WITH HER FATHER ON HIS VISITATION WHEN IT'S CONVENIENT TO HIM AND WORK IT OUT BETWEEN ALL OF YOU BECAUSE MATURE PEOPLE OUGHT TO BE ABLE TO WORK THAT OUT, BUT WHAT HAPPENS IS PRETTY SOON YOU GET A SPECIFIC ORDER AND THE WIFE SAYS WELL, IT'S HIS WEEKEND HE'S NOT COMING BY, I GUESS HE DOESN'T WANT TO SEE YOU. ALL IT DOES IS CREATE A DIFFICULT ATTITUDE IN A CHILD THAT HAS TO GROW UP ALREADY IN AN ENVIRONMENT THAT THE CHILD DIDN'T PREFER BECAUSE THE CHILD DIDN'T ASK YOU TO GET DIVORCED AND THE CHILD DIDN'T ASK YOU TO DIVIDE YOUR INTERESTS IN THAT CHILD. SO WHAT YOU DO IS YOU CREATE FOR THE CHILD THE PROBLEMS. SO A SPECIFIC ORDER CAN CREATE THEN THE DIFFICULTY BECAUSE THEN ONE OR THE OTHER OF YOU IS TRYING TO ENFORCE OR INTERFERE WITH THE ORDER AND THE CHILD COMES UP CONFUSED. SO I WILL TELL YOU BOTH I PREFER TO HAVE THE VISITATION STATE REASONABLE AND

LIBERAL. IF THAT'S INADEQUATE AND YOU CAN'T AGREE TO IT I WILL ENTER A SPECIFIC ORDER AND I'VE GIVEN YOU AN INDICATION OF WHAT THAT ORDER WOULD SAY, BUT I DON'T PREFER THAT. YOU CAN DECIDE WITH YOUR COUNSEL AS TO WHICH YOU PREFER. IF EITHER ONE OF YOU WANT THE SPECIFIC ORDER THAT WILL BE THE ORDER OF THE COURT. ALL RIGHT? NOW, I THINK THAT PRETTY WELL TELLS YOU HOW I FEEL ABOUT VISITATION. I THINK THAT THAT DAUGHTER HAS A RIGHT AND THAT THE MOTHER HAS A RESPONSIBILITY TO SEE THAT THE DAUGHTER SPENDS TIME WITH HER FATHER.

I'M JUST ANNOYED WITH THE FREQUENCY WITH WHICH THIS COURT HAS TO DEAL WITH THAT ISSUE. THE INTERFERENCE IS SUBTLE; THE INTERFERENCE IS INCONVENIENCE; THE INTERFERENCE IS IN THE BATHTUB; THE INTERFERENCE IS OUT PLAYING, SHE'S ASLEEP, ALL OF THOSE KINDS OF THINGS. WELL, WHAT REALLY OUGHT TO HAPPEN IS IF, IN FACT, SHE IS IN THE BATHTUB SHE OUGHT TO CALL AS SOON AS SHE'S OUT. THAT MAKES IT EASY BUT IT DOESN'T HAPPEN BECAUSE SHE FEELS THAT IT'S AN INTERFERENCE WITH YOU AND SHE DOES--

MRS. BOIES: THAT'S NOT WHAT SHE FEELS.

JUDGE YOUNG: BUT SHE DOES BELIEVE THAT SHE SHOULDN'T CALL AND SHE IS AFRAID TO CALL. I DON'T WANT TO HEAR WHAT YOUR REASON IS BECAUSE I'VE HEARD IT ALREADY. I WANT TO SORT THE PROBELEM OUT IN A MATURE WAY. I WANT YOU TO RESOLVE IT WITH HER. OKAY? THAT'S WHAT I WANT.

I WANT THIS THING RESOLVED. IT SEEMS TO ME THAT

YOU ARE BOTH MATURE PEOPLE AND OUGHT TO BE ABLE TO RESOLVE IT. WHAT YOU OUGHT TO DO IS YOU OUGHT TO HAVE HER CALL UP AND LET HER TELL HER DAD SHE DOESN'T WANT TO TALK BUT SHE BETTER NOT HEAR THAT FROM YOU.

MRS. BOIES: SHE NEVER HAS.

JUDGE YOUNG: I HOPE SHE NEVER WILL.

NOW, IN RELATION TO CHILD SUPPORT THAT WON'T BE RESOLVED UNTIL YOU'VE PROVIDED YOUR AFFIDAVIT AS TO WHAT THE ARREARAGES ARE. LIKEWISE, WILL ALSO BE THE ATTORNEY'S FEES PROBLEM.

IN RELATION TO THE HOME IT DOESN'T SEEM TO ME THAT THE HOME IS BEING RESPONSIBLY MANAGED. IT DOESN'T SEEM TO ME THAT SOMEBODY WITHOUT AGREEMENT BETWEEN BOTH OF YOU WHEN THE HOME--YOU EACH OWN THAT HOME RIGHT NOW, YOU EACH HAVE AN EQUITABLE INTEREST. HE CONTINUES TO PAY THE MORTGAGE. HE OUGHT TO BE CONSULTED AS TO WHETHER SOMEBODY'S GOING TO LIVE THERE FREE. HE SHOULD HAVE NO DIFFICULTY GETTING HIS REAL ESTATE AGENT INTO THE HOME. IF HE WANTS A KEY BOX ON THE HOME THERE OUGHT TO BE A KEY BOX ON THE HOME. THAT OUGHT TO BE EASY. THAT CAN BE HANDLED WITH A REALTOR. IT'S A COMMON PRACTICE. THE HOME OUGHT TO BE OPENLY ACCESSIBLE TO ANYBODY THAT WANTS TO LOOK AT IT FOR THE PURPOSE OF CONSIDERING PURCHASING IT.

I THINK SINCE THE DEFENDANT DOES PAY THE MORTGAGE THAT THE DEFENDANT OUGHT TO HAVE RESPONSIBILITY FOR THE HOME

SO I WILL ORDER THAT THE DEFENDANT BE THE ONE TO WHOM THE MANAGEMENT OF THE HOME IN THE FUTURE IS DIRECTED. IF THERE IS A RENTER THAT YOU CAN RENT THE HOME TO THEN WORK THAT OUT AND SHARE THE RENTAL, OFFSET THE MORTGAGE AGAINST THE RENTAL SO THAT IT'S RESPONSIBILY DEALT WITH. YOU CAN WORK OUT WITH ELI DURAN WHAT THE RELATIONSHIP WILL BE AS TO WHETHER HE'S TO LIVE THERE RENT FREE. IF YOU FEEL THAT'S IN THE BEST INTEREST OF PRESERVING THE ASSET THEN LET HIM DO IT. I THINK THAT RESOLVES THE ISSUE OF THE HOME. I THINK THE HOME SHOULD CONTINUE TO BE LISTED FOR SALE.

OBVIOUSLY, YOU ARE NEVER GOING TO BE ABLE TO SELL THE HOME WITHOUT BOTH OF YOU AGREEING ON A PURCHASE PRICE OR THE CONTRACT OF SALE. IF THAT'S NECESSARY TO BE RESOLVED BY THE COURT AT THE TIME IT'S PRESENTED TO THE PARTIES BECAUSE YOU CAN'T AGREE TO IT, IF ONE IS WILLING TO ACCEPT AND THE OTHER IS NOT, THE COURT CAN RESOLVE IT AT THAT TIME, BUT I THINK BECAUSE OF THE FACT THAT MRS. BOIES LIVED IN THE HOME FOR A YEAR DURING WHICH TIME MR. BETTINGER PAID THE MORTGAGE AND BECAUSE OF THE FACT THAT THE HOME IS NOW VACANT, IT'S CRITICAL THAT BOTH OF YOU HAVE A COMMITMENT TO PRESERVING THE VALUE OF THAT ASSET AND THAT YOU DO IT IN A RESPONSIBLE WAY. SO I THINK IT WOULD BE APPROPRIATE TO TRANSFER THAT RESPONSIBILITY TO MR. BETTINGER.

THAT LEAVES ONLY THE TWO ISSUES TO BE RESOLVED ON COSTS AND FEES. LET ME SAY--AND THE CHILD SUPPORT. THOSE

WILL BE RESOLVED FOLLOWING THE PRESENTATION TO THE COURT OF THE SUPPLEMENTAL OR ADDITIONAL MEMORANDA.

AS TO THE ORTHODONTIC BILL I WANT THAT TO BE EXAMINED BY BOTH OF YOU. AFTER REVIEWING--YOU HAVEN'T HAD AN OPPORTUNITY, MISS CORPORON, TO RESPOND TO THAT, BUT AFTER REVIEWING THE MEMORANDUM THAT HAS BEEN PRESENTED TO THE COURT IF, IN FACT, THE ORTHODONTIC BILL WAS PAID TO MRS. BOIES AND SHE FAILED TO PAY THAT ON THE ORTHODONTIC BILL SHE WILL BE ASSESSED THE RESPONSIBILITY OF MAKING THAT PAYMENT.

IS THERE ANYTHING FURTHER?

MR. MC DONALD: ONE OTHER THING, YOUR HONOR. COULD I HAVE AN ORDER ALSO THAT THE--UNTIL THE COURT RESOLVES THE CHILD SUPPORT PROBLEM THAT THE OFFICE OF RECOVERY SERVICES IS FURTHER STAYED FROM ANY ENFORCEMENT?

JUDGE YOUNG: ANY OBJECTION TO THAT ORDER?

MS. CORPORON: I WOULD ANTICIPATE--MAY WE HAVE TEN DAYS TO SUBMIT OUT MEMORANDUM?

JUDGE YOUNG: YOU MAY HAVE TEN DAYS TO SUBMIT YOUR MEMORANDUM, BUT PENDING THAT AND THE RULING OF THE COURT YOU HAVE NO OBJECTION TO RECOVERY SERVICES BEING STAYED, DO YOU?

MS. CORPORON: I DON'T THINK THAT TEN DAYS IS GOING TO MAKE THAT MUCH DIFFERENCE, YOUR HONOR.

JUDGE YOUNG: THAT CERTAINLY WOULD BE THE ORDER OF THE COURT SO I THINK IT WOULD BE INAPPROPRIATE FOR YOU TO OBJECT BUT I WANTED TO PROVIDE YOU WITH THE OPPORTUNITY.

ANYTHING FURTHER?

MR. MC DONALD: THANK YOU, YOUR HONOR.

JUDGE YOUNG: COURT WILL BE IN RECESS.

LET ME ASK, BEFORE WE GO FORMALLY INTO RECESS, WE DID NOT ENTER THE EXHIBITS. DO YOU WISH THEM TO BE--

MR. MC DONALD: I WOULD OFFER THEM INTO EVIDENCE, YOUR HONOR.

JUDGE YOUNG: ANY OBJECTION TO THOSE EXHIBITS?

MS. CORPORON: I STILL HAVEN'T HAD AN OPPORTUNITY TO LOOK AT THEM, YOUR HONOR. I ASSUME THEY ARE SUMMARY EXHIBITS OF HIS TESTIMONY. I DON'T HAVE ANY OBJECTION, YOUR HONOR.

JUDGE YOUNG: THEY WILL BE RECEIVED.

(WHEREUPON, DEFENDANT'S EXHIBITS 1 THROUGH 8 WERE OFFERED AND RECEIVED INTO INTO EVIDENCE).

(WHEREUPON, THE HEARING WAS CONCLUDED).

* * *

C E R T I F I C A T E

STATE OF UTAH)
: SS.
COUNTY OF SALT LAKE)

I, EILEEN M. AMBROSE, HEREBY CERTIFY THAT I AM A CERTIFIED SHORTHAND REPORTER OF THE STATE OF UTAH; THAT AS SUCH CERTIFIED SHORTHAND REPORTER, I ATTENDED THE HEARING OF THE ABOVE-MENTIONED MATTER AT THAT TIME AND PLACE SET OUT HEREIN; THAT THEREAT I TOOK DOWN IN SHORTHAND THE TESTIMONY GIVEN AND THE PROCEEDINGS HAD THEREIN; AND THAT THEREAFTER I TRANSCRIBED MY SAID SHORTHAND NOTES INTO TYPEWRITING, AND THAT THE FOREGOING TRANSCRIPTION IS A FULL, TRUE, AND CORRECT TRANSCRIPTION OF THE SAME.

Eileen M. Ambrose, C.S.R.
EILEEN M. AMBROSE, C.S.R.

MY COMMISSION EXPIRES:

JANUARY 14TH, 1988.